

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 135

ORGANIZATION FOR A BETTER
AUSTIN, et al.,

Petitioners,

vs.

JEROME M. KEEFE,

Respondent.

On Writ of Certiorari to the Appellate Court of Illinois,
First District.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

- Oct. 4, 1967—Plaintiff Keefe's original complaint for injunctive relief filed in the Circuit Court of Cook County, Illinois.
- Oct. 11, 1967—Defendants' original answer to complaint for injunctive relief filed.
- Oct. 16, 1967—Plaintiff's amended complaint for injunction filed.
- Nov. 3, 1967—Defendants' answer to amended complaint for injunction filed.
- Nov. 3, 1967—Evidentiary hearing on plaintiff's motion for a temporary injunction.
- Dec. 20, 1967—Temporary injunction order entered enjoining defendants from passing out literature of any kind and from picketing anywhere in the City of Westchester, Illinois.
- Jan. 8, 1968—Defendants' notice of interlocutory appeal to the Supreme Court of Illinois filed.
- Mar. 14, 1968—Case ordered transferred to the Appellate Court of Illinois, First District by the Supreme Court of Illinois.
- Sept. 29, 1969—Opinion and affirming order of the Appellate Court of Illinois, First District filed.
- Oct. 27, 1969—Order entered granting defendants' motion for leave to file a petition for rehearing instanter.
- Oct. 30, 1969—Order entered denying defendants' petition for rehearing and modifying the opinion of the Appellate Court previously filed on September 29, 1969.
- Dec. 4, 1969—Defendants' petition for appeal as a matter of right and in the alternative petition for leave to appeal to the Supreme Court of Illinois filed.
- Jan. 27, 1970—Order of the Supreme Court of Illinois denying defendants' petition for leave to appeal.

[C29] State of Illinois }
County of Cook } SS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department Chancery Division

JEROME M. KEEFE,

Plaintiff

vs.

ORGANIZATION FOR A BETTER AUSTIN,
WILLIAM HOLMES, JUSTIN M. MCCARTHY,
and KATHY METROPOULOS,

Defendants

No. 67 CH 5357

AMENDED COMPLAINT FOR INJUNCTION
[Filed Oct. 16, 1967]

Now comes the plaintiff, Jerome M. Keefe, and filing his amended complaint herein, states as follows:

1. That the plaintiff is a real estate broker, licensed to do business in the City of Chicago and the State of Illinois under the name of "Jerry's Real Estate", and he is engaged in the business of acting as a broker for the purchase and sale of real estate.

2. That the defendant, Organization For A Better Austin, is an organization located in the section of Chicago commonly known as "Austin", and William Holmes, Justin M. McCarthy and Kathy Metropoulos, are active members of said Organization.

3. That the said defendant, Organization For A Better Austin, by and through its agents, officers and servants, together with William Holmes, Justin M. McCarthy and Kathy Metropoulos, indicated an express displeasure with the manner in which the plaintiff conducted his real estate business, by [C30] accusing him of being a block-buster (selling real estate to one Negro family and then frightening the other property owners in the neighborhood

whereby they became panicky and began to offer their property for sale through the plaintiff's real estate office), which course of conduct on the part of the defendants commenced on or about August 15, 1967 and continued through October 1, 1967, and still continues, without any justifiable cause, reason or excuse.

4. That from September 9, 1967 to September 30, 1967, the defendant, and a group of individuals, all members of the said Organization For A Better Austin, began to assemble in front of the plaintiff's place of business at 214 South Laramie St., Chicago, Illinois, and began to picket and distribute circulars critical of the plaintiff and his real estate business; they distributed literature throughout the neighborhood and community criticizing him and impugning his reputation as an honest and law-abiding operator of a real estate business, and attacked the business tactics employed by the plaintiff, who has at all times been honest and beyond reproach.

5. That the conduct of the defendants herein, individually and as a group, has invaded the privacy of plaintiff herein, without any justifiable cause, reason or excuse.

6. That the defendants, individually and collectively, will ruin and destroy the plaintiff's business and his means of livelihood by their malicious, wrongful, contriving and designing conduct, and that said plaintiff has no adequate remedy at law to restrain them from so doing.

[C31] 7. That the Austin neighborhood is now in the process of a transition and in a state of change, which was not brought about by the conduct and attitude of the plaintiff herein, who at all times is not restricting his sales primarily to Negro people, but will sell to any person who is willing to purchase real estate in the neighborhood at a fair and reasonable price, and the plaintiff herein is not discriminating as to selling prices quoted to any of his prospects.

8. That the plaintiff is not engaged in "panic selling"; that his advertising is in the local newspapers, and further that the plaintiff is not intimidating nor cajoling anyone in the neighborhood in to selling their real estate by telling them that if they do not sell that the value of their property will depreciate substantially.

9. That if the defendants continue in their wrongful acts, the harm to the plaintiff will be irreparable; that he will suffer substantial monetary losses as a result of the wrongful conduct of these defendants as hereinabove set forth.

Wherefore, plaintiff prays:

A. That the Court order the People's Writ of Injunction to issue, without bond, to the defendants, restraining and enjoining the defendants, individually and collectively, from picketing his place of business and his home; from distributing derogatory pamphlets or literature reflecting upon plaintiff's good name and his business practices; and from assembling at plaintiff's place of business and holding demonstrations.

B. That he may be granted temporary relief pendente lite, until a final hearing on this Complaint and the answers [C32] thereto by the defendants.

. . .

[C35] ANSWER TO AMENDED COMPLAINT FOR INJUNCTION

[Caption omitted in printing—Filed Nov. 3, 1967]

Now come defendants, Organization for a Better Austin, William Holmes, Justin M. McCarthy and Kathy Metropoulos and for answer to the Amended Complaint for Injunction state as follows:

1. Defendants admit the allegations of paragraph 1 of said Complaint. Defendants further allege that the plain-

tiff's place of business has been located at 214 South Laramie for approximately seven months, and prior to this was located on Cicero Avenue.

2. Defendants admit the allegations contained in paragraph 2 of said Complaint.

3. Defendants admit that they have since some time in August, 1967 expressed their displeasure with the manner in which plaintiff was conducting his real estate business in the Austin area of Chicago. Defendants admit that they have accused the plaintiff of being what is commonly referred to as a "blockbuster" or "panic-peddler," but deny that the definition contained in parentheses in paragraph 3 of said Complaint is an accurate definition of the practices commonly referred to as "blockbusting" or "panic-peddling." Defendants admit that their said displeasure continues, but deny that it is without justifiable cause, reason or excuse.

[C36] 4. Defendants admit that on some days during the month of September, 1967, some of them picketed in front of plaintiff's place of business and distributed circulars critical of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood.

On the assumption that "the neighborhood and community" referred to in the second half of paragraph 4 of the said Complaint is that of Westchester, Illinois, where plaintiff resides, defendants answer as follows:

Defendants admit that on September 9, 1967, some of them arrived at the home of the plaintiff but defendants further allege that they called at plaintiff's house for the purpose of meeting with him to discuss certain real estate activities in Austin which defendants find objectionable and destructive of the Austin area as a stable integrated community. When defendants arrived at the home of the

plaintiff, the plaintiff was not home but plaintiff's wife was there. Plaintiff was then contacted and a meeting was arranged between plaintiff and the defendants for that afternoon and said meeting was held at St. Thomas Aquinas Church, 5112 West Washington, Chicago, Illinois. At this meeting defendants discussed with plaintiff the real estate activities in Austin which defendants found objectionable and requested an agreement from plaintiff that he would cease and desist from said activities. Specifically the plaintiff was asked to cease soliciting the sale of property in the community of Austin; he was asked to show property in the Austin area to white as well as Negro buyers; and he was asked to make his housing listings available to the defendants' housing referral committee so that qualified buyers and renters could be located by the defendants for plaintiff's listings. The plaintiff refused to sign this agreement. After this meeting the defendants and other individuals distributed to some residents of homes in the neighborhood where plaintiff resides, mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin area of Chicago. Defendants admit that on September 16, 1967, September 30, 1967 and October 22, 1967, some of them distributed to some residents of homes in the neighborhood where plaintiff resides, mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin area, and that some defendants [C37] distributed the said mimeographed sheets in the area around the church of which plaintiff is a parishioner on September 17, 1967 and October 22, 1967. Defendants deny the remaining allegations of paragraph 4 of the said Complaint.

5. Defendants deny all the allegations contained in paragraph 5 of said Complaint.

6. Defendants deny all the allegations contained in paragraph 6 of said Complaint.

7. Defendants admit that the racial composition of the Austin neighborhood is now in a state of flux. Defendants further state that the Organization for a Better Austin is an organization of concerned citizens devoted to the goal of peaceful and stable integration in the Austin area, and for the maintenance of a quality community with quality schools and civic pride. Defendants deny that plaintiff is not restricting his sales primarily to Negroes. Having insufficient information on which to base a belief, defendants neither admit nor deny the remaining allegations of paragraph 7 of said Complaint but demand strict proof thereof.

8. Defendants deny that plaintiff is not engaged in "panic-selling". Defendants admit that plaintiff advertises in local newspapers but deny that that is the only type of advertising or solicitation in which he engages. Having insufficient evidence on which to base a belief defendants neither admit nor deny the remaining allegations of paragraph 8 of said Complaint but demand strict proof thereof.

9. Defendants deny the allegations of paragraph 9 of said Complaint.

10. Further answering said Complaint, defendants state that the activities made the subject of said Complaint were engaged in to protest certain practices, specifically those commonly referred to as "blockbusting" and "panic-peddling," carried on by plaintiff in the conduct of his real estate business in the Austin area of Chicago. These practices, exhibited in the form of solicitation of the sale of homes owned by residents who have expressed no intention to sell their homes or to move

from the neighborhood and further expressed by statements designed and calculated to arouse and excite the fears and prejudices of those living in or owning property in the Austin neighborhood, conflict with the public policy of the state of Illinois as expressed by H. B. 1179 recently passed by the Illinois General Assembly and signed by Governor Kerner (a copy of which is attached as Exhibit A to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by [C38] reference), and by Chapter 198.7-B of the Municipal Code of Chicago (attached as Exhibit B to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by reference), and by the Illinois Real Estate Brokers and Agents Act, Section 8-d-11. The gravity of this problem is recognized in a pamphlet published for the benefit of community organizations by the Chicago Commission on Human Relations, an official agency of the city of Chicago (a copy of which is attached as Exhibit C to defendants' Answer to plaintiff's original Complaint for Injunctive Relief and incorporated herein by reference.)

11. Further answering the said Complaint, defendants state that on September 25, 1967, representatives of the Organization for a Better Austin met at the office of the Chicago Commission on Human Relations with representatives of said Commission to file complaints of unfair housing practices against the plaintiff under the Chicago fair housing ordinance. Defendants' representatives met with members of the Chicago Commission on Human Relations on September 28, 1967, at which time a conciliation meeting was scheduled by the Commission for October 4, 1967. On October 4, 1967, defendants' representatives were present; plaintiff did not personally appear, but at the request of plaintiff's attorneys, the meeting was continued

to October 11, 1967, at which time plaintiff was directed to appear. On October 11, 1967, neither plaintiff nor his representatives appeared, and the Commission continued the meeting to October 23, 1967, and directed plaintiff to appear at that time. On October 23, 1967, the plaintiff appeared at the scheduled conciliation meeting and refused to agree to the conciliation terms proposed by either the Commission or the defendants. As a result the Commission has ordered a public hearing, to be held on November 21, 1967.

12. On October 3, 1967 a group met with the Honorable Richard J. Daley, mayor of the City of Chicago, to discuss with him the gravity of the situation in the Austin neighborhood and the conduct of a number of real estate brokers including plaintiff in that neighborhood.

13. Further answering the allegations of said amended Complaint defendants state that the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois.

[C39] 14. By reason of these facts, defendants deny that plaintiff is entitled to seek court of equity jurisdiction or to obtain injunctive relief against defendants.

Wherefore Defendants Pray:

1. That the said amended complaint for injunctive relief be dismissed and the relief sought therein be denied and that defendants have their costs so wrongfully required to be expended.

2. For such other and further relief as this court shall deem appropriate in the premises.

Organization For A Better Austin

• • •

PLAINTIFF'S EXHIBIT No. 1

Perhaps you would like to know that your neighbor:

JEROME KEEFE

1951 Manchester

Westchester, Illinois

FI 5-3784

Is a panic peddler who has been soliciting in the Austin community with cards like this

WE INVITE YOUR LISTINGS

We Have Prospective Buyers For Income And Residential Properties In Chicago Areas

We Invite Your Listings

Jerry's Real Estate

214 So. Laramie Ave.

Chicago, Illinois 60644

Jerome M. Keefe

378-8993

Realtor

and:

- 1. He told numerous people that "I only sell to Negroes."**
- 2. He . . . "was one of the 12 most frequently cited by homeowners in the Southeast Austin for soliciting real estate listings in a racially changing neighborhood."**
Chicago Daily News Dec. 20, 1965
- 3. He is doing everything he can to make a fast buck in Austin.**
- 4. He has already done this in Lawndale, Garfield Park, and along Cicero Avenue.**
- 5. We thought you would like to know**

BECAUSE YOU MAY BE NEXT.

DEFENDANTS' EXHIBIT No. 1

RESIDENTS OF WESTCHESTER BEWARE—

Jerome Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784

Is the real estate broker who operates out of Jerry's
Real Estate 214 S. Laramie, Chicago 378-8993.
He has been accused of PANIC PEDDLING.

**THE REASON WE ARE IN WESTCHESTER TODAY
IS THAT—**

He has refused to sign an agreement with us stating
that he will not solicit in our community.

While on a solicitation call in our community he
stated: "I only sell to Negroes."

When asked if he had ever done business in anything
but a racially changing neighborhood he said "NO"

**WE THE NEGRO AND WHITE RESIDENTS OF
AUSTIN DEMAND THAT THIS TYPE OF ACTIVITY
STOP.**

If you want us to stop coming to Westchester call
Jerry Keefe at

FI 5-3784 or 378-8993

and tell him to sign the agreement with the Austin
community.

WHEN HE SIGNS WE STAY IN AUSTIN.

DEFENDANTS' EXHIBIT No. 2

RESIDENTS OF WESTCHESTER—

Do the Real Estate Brokers of Westchester harrass you by leafleting your property, phoning you, or ringing your doorbells asking you to sell your property!

Jerome Keefe, your neighbor at 1951 Manchester has been doing it to we the residents of Austin, AND WE ARE SICK OF IT!!!

FOR YOUR INFORMATION—

1. He has been accused of panic peddling.
2. Three times he has refused to sign an agreement with the people of Austin to stop this **ILLEGAL SOLICITING** in our community.
3. He has stated to a number of people "I only sell to Negroes".
4. He has never done business in anything but a racially changing neighborhood and has openly admitted it to us at a public meeting.
5. You can support us by calling him at FI 5-3784 or 378-9883 and tell him to sign the "**NO SOLICITATION AGREEMENT**" with the Austin community.

**WHEN HE SIGNS THE AGREEMENT
WE STOP COMING TO WESTCHESTER.**

DEFENDANTS' EXHIBIT No. 3

[Side 1]

LEN O'CONNOR

Thursday, September 21, 1967

When I made a report, recently, about a panic-peddler in Rogers Park—on the North Side of Chicago: the roof caved in.

City and State agencies put the matter under investigation, and that was good. But I was accused—among other things—of being Anti-Real Estate, Anti-American, and Anti-Semitic.

I enter a plea of not guilty on all three charges.

When somebody is trying to rip up a neighborhood by hustling real estate deals with a sales pitch that those people will start moving in, he is asking for trouble and he should get it—regardless of his race, creed, color or religious affiliation.

There is an organization out in Austin—on the far west side of Chicago that seems to share this view. A group called, "Organization for a Better Austin."

Austin is an integrated community, on balance. It is not integrated in fact, because while 14 per cent of the 120 thousand people living there are non-white; the non-whites are gathered in the southeastern corner of the area.

The Organization for a Better Austin is attempting to break the pattern of having the Negro area increase, block by block. The Organization is striving to encourage the movement of non-whites into all white neighborhoods. This, the Organization believes, is the only hope there is for preventing the collapse of Austin into a ghetto.

People living in the northern section of Austin are not sympathetic to the Organization's plan. But 183 individual groups make up the Organization, so it is not without influence.

The Organization for a Better Austin puts the blame for block-busting that completely transformed the south eastern corner of the area from white to black, in the course of only two years upon white real estate sharpies.

By phone, by mail and in person, these real estate creeps have been soliciting property from white home-owners for re-sale to non white buyers. The pitch is that, "I can un-load your house now; but, if you wait, I don't think I'll be able to help you." And—Block by block, the sharpies have created a ghetto.

The Organization for a Better Austin has filed five notarized complaints against the panic peddlers. Four of the five real estate firms have signed agreements that they will cease to solicit homes for re-sale.

The fifth man, who is holding out, is being picketed by white home owners he tried to panic into selling out to him.

There is no way of knowing what the final result of these efforts of the Organization for a Better Austin will be. But their goal is to establish a racially stable community. Only a dollar-hungry real estate man could fault them for that.

And I am Len O'Connor.

[Side 2]

Residents of Westchester—

This is to inform you that Jerry Keefe
1951 Manchester
Westchester, Illinois
FI 5-3784

Who operates Jerry's Real Estate at 214 S. Laramie, Chicago said in a public meeting when asked:

"Have you ever done business in anything but a changing neighborhood?"

"NO"

His solicitation tactics in our community have caused unrest and alarm. On our last visit to Westchester many asked us "Why don't you take legal action against Keefe?"
HERE IS OUR ANSWER:

1. We have filed to complaints with the department of Education and Registration with the State of Illinois.
2. We have filed complaints with the Mayor's Commission on Human Relations. They have ruled there is justification for our complaints and have arranged a hearing for Wednesday Oct. 4 at 2:30 p.m. 211 W. Wacker Drive. You might like to be present to learn the out come.
3. We have an appointment with the Honorable Richard J. Daley Tuesday Oct. 3 to discuss this matter.
4. Our Clergy Council has voted its support to us and is joining us in our fight to rid Austin of all panic peddlers.

Calls or Telegrams to the Mayor's Commission on Human Relations

211 W. Wacker Drive
744-4111

urging swift and strong action concerning Jerry Keefe.

[Vol. I of the Transcript of Proceedings]

State of Illinois)
County of Cook) SS:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — CHANCERY DIVISION

Jerome M. Keefe,

Plaintiff,

-vs-

Organization For Better Austin,
William Holmes, Justin M. Mc-
Carthy & Kathy Metropoulos,
Defendants.

67 CH 5357

Report Of Proceedings, had at the hearing of the above entitled cause before the Honorable Jerome M. Covelli, Judge of said court, on the 3rd day of November, 1967, at ten A.M.

. . .

[2] Mr. Browne: This is a motion for a hearing on the matter of a temporary restraining order pending the present hearing on the case.

A verified complaint was filed here asking for the injunctive relief restraining certain people from congregating in front of a man's place of business, passing out leaflets and pamphlets, ostracizing this man's methods of doing business without any rhyme, reason or foundation and consistent with the statutory changes on preliminary injunctions I am asking that a temporary injunction be issued immediately for ten days.

The Court: Temporary restraining order.

Mr. Browne: I am sorry, temporary restraining order for ten days in conjunction with the changes.

Mr. Long: Your Honor, we actually have two things before us at this moment; one is this motion to strike our bill of particulars and the statement in the notice of motion was sufficient to indicate to us what was intended by the part that was giving us trouble.

We have an answer which we are prepared to file. We are ready for a hearing on the temporary [3] order also.

. . .

JEROME M. KEEFE, a witness called on behalf of the Plaintiff herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Browne.

Q. Please state your full name? A. My name is Jerome M. Keefe.

Q. Where do you live? A. 1951 Manchester Avenue in Westchester, Illinois.

Q. What is your business or occupation? A. I am presently engaged in real estate at 214 South Laramie Avenue, Chicago.

Q. Are you a licensed real estate broker? [4] A. I have been a broker since about 1961 approximately.

Q. How long have you been in business and have had an established place of business? A. Since 1961, yes, sir.

Q. You are the plaintiff in this case? A. Yes, I am.

Q. Calling your attention to on or about September 1, 1967, do you know what occurred at your place of business? A. Yes, I do.

Q. Tell us what has occurred? A. Well, I would say—

Q. Not what you would say, Mr. Keefe, what has occurred? A. Yes, sir. On or about September 8, 1967, Mr. Holmes called me at my home.

Q. He's one of the defendants in this case? A. Yes, sir.

Q. Do you know whom he is associated with? A. He's with the real estate practices committee of the O.B.A.

Q. Tell the court what the O.B.A. stands for? A. O.B.A. stands for Organization for Better Austin.

[5] Q. Now, what did they say or do on that day, if anything? A. On that date, Mr. Holmes requested I meet with him the next day or that evening and it was quite late on a Friday evening. So I mentioned I was unable to meet with him, but I would try and meet with him the next day, September 10, 1967 at my office. After he called me, I checked and discovered that they had been to other real estate offices—

Mr. Long: Objection.

Mr. Browne: Forget about it. Let's concentrate about one thing, what was said to you, if anything and what transpired after that, if anything.

The Witness: I did not meet with him. I thought it was too large a group for me as an individual to cope with and I did not meet with them to be very honest with you. We arranged a meeting the next Saturday, at which time I did meet with approximately 200 people in St. Thomas Aquinas hall.

Q. Did you go there and meet with these people at St. Thomas Aquinas— A. Yes, in their parish hall and tried to answer as best I could under the circumstances all the grievances.

[6] Q. Will you name some of the grievances that they complained of, or what they had against you? A. They claimed I was panic selling.

Q. Do you know what panic selling means? A. Panic selling is the levering of a seller, any seller out of a

neighborhood by the introduction of ethnic change or the depression of the oppressed by the introduction of ethnic change.

Mr. Long: Objection, your Honor: We are willing to let that stand, but not as the sole definition.

Mr. Browne: This is his interpretation.

The Court: Over-ruled.

Mr. Browne: Thank you. What else was said, if anything?

The Witness: We had about an hour interview, at which time I attempted as best I could to answer all their questions and the summation of it was that I was asked to sign a pledge which I felt went beyond the existing city and state laws and—

Mr. Browne: Q. Can you disclose the contents of this pledge for us? A. It mentioned that I should not solicit by phone, flyer, visit or mail in the Austin area, that I should [7] cooperate with the Real Estate Practices Committee and furnish listings—

Q. And when you say, I am sorry, when you say they told you to cooperate with the Real Estate Committee, which committee were they referring to, do you know? A. The Real Estate Practices Committee, which I was willing to do.

Q. Who is the Real Estate Practices Committee, do you know? A. Mr. Holmes is the head of it.

Q. And what else? A. I forgot the third point. I am not sure.

. . .

Mr. Browne: Now, what happened after that?

The Witness: After I met with them, I was under the impression that if I did meet with them, that they would stop the harrassment at my house and place of business, but it wasn't true.

Mr. Browne: Q. When you say harrassment, will you tell us what was done to harrass you at your place of business by these people? A. It started the week that I met with them. I [8] would feel it was about September 17th and it included passing out literature right in my own immediate neighborhood, and passing out literature around my office which was disparaging I felt to my name and reputation as a business man.

Q. I show you Plaintiff's Exhibit No. One.

(Whereupon Plaintiff's Exhibit No. One was marked for Identification.)

Can you tell us what that purports to be? A. This is one of the hand outs which was passed throughout my own neighborhood in Westchester.

Q. Do you know that it was passed out in your neighborhood? A. Yes, I do, definitely.

Q. I introduce this, counsel, as evidence. A. I did mention to them at our meeting on September 10th that I was willing to sign a pledge that coincided with the City and State laws.

Mr. Long: That is only his interpretation of it.

Mr. Browne: Can I introduce—At this time, I would like to introduce Plaintiff's Exhibit No. One.

The Court: No objection. Go ahead and proceed.

[9] Mr. Browne: I now show you Plaintiff Exhibit No. Two and ask you if you will tell us what this purports to be? (Whereupon Pl. Ex. No. Two marked for identification.)

The Witness: This is a telegram sent by the Real Estate Practices Committee.

Mr. Browne: Q. When you say Real Estate Practices Committee, what are you referring to? A. This is the

Real Estate Practices Committee of the Organization for Better Austin.

Q. Go ahead. Tell us what it purports to be.

Mr. Long: Excuse me but that looks like a newspaper, not a telegram.

The Witness: Yes. It is a reprint of a telegram which has been taken in total and published in the Westchester news.

Mr. Long: Your honor, we are not in the publishing of newspaper business.

The Court: Over-ruled, go ahead.

Mr. Browne: As you look over at Plaintiff's Exhibit No. Two, will you tell us what that is?

The Witness: I will read it to you.

The Court: No, you cannot read.

Mr. Browne: Just tell us what you see there:

[10] The Witness: This is a newspaper. It is a picture of my office and pickets marching up and down in front of it saying, "He is panic peddling, and panic peddling in our neighborhood must stop, stop him."

Mr. Browne: And do you know how (Strike that) Do you know who put this picture in and how it got there in the paper?

The Witness: This picture was sent I imagine—

Mr. Long: Objection, your Honor.

The Court: Sustained.

Mr. Browne: Tell us not what you imagine but what you know.

The Witness: It is a picture sent by the O.B.A. to the Westchester News for publication.

Mr. Long: Objection.

Mr. Browne: Well, he's telling what—

The Court: With-draw your objection.

Mr. Browne: What is the ruling, your Honor?

The Court: He is to with-draw.

Mr. Browne: Will you tell us what this purports to be and how it got there?

The Witness: It is a picture sent by the O.B.A. [11] to the Westchester News for publication in the Westchester paper.

Mr. Browne: Q. Can you describe the premises there?

A. It is my office at 214 South Laramie is in the picture and the picketers are marching in front of it.

Q. Counsel?

Mr. Long: We have no objection to the picture, your Honor. We would like to check the rest of the matter that appears on the newspaper.

The Court: The photographs will be accepted in evidence.

Mr. Long: Very good, your Honor.

The Court: Nothing else will appear at this time unless you can do it later.

. . .

[12-13] . . .

[14] . . . Mr. Browne: Now, have you been guilty of resorting to these practices?

The Witness: I honestly don't feel that I have. I have been cleared by the Department of Registration and Education. I have had a hearing before the Commission of Human Relations.

Mr. Browne: Q. Just tell us whether or not— A. I never have. I never in my life have.

Q. Will you tell us what the condition of the neighborhood of Austin west of the railroad tracks, off Cicero to Laramie and from Congress to Lake Street, what is the neighborhood condition there in that section? [15] A. I would say it is integrated to some extent.

Q. What percentage? A. I have no idea. I am not an expert on percentages.

Q. Is it lightly integrated, heavily integrated or medium integrated? A. I really couldn't say. There are some negroes and some white people in the area.

Q. Now, is it your practice to discriminate and offer your real estate to negroes only or anybody that applies?

A. Absolutely not. I have entertained white customers and have gotten depositions from anyone that you want. I have tried hard to sell to white people. It is difficult. I am stating a fact. I don't discriminate. Absolutely not.

Q. Have you made that known to all these people that you do not discriminate? A. Yes. I tried to make it known in our public meeting absolutely. I never stated I sell only to the negro race. I want to correct that misimpression.

Q. You may cross examine him.

[16] *Cross Examination by Mr. Pomerantz.*

Q. Mr. Keefe, you stated you have been in business since 1961 in an established place of business. Where was that place of business? A. Ten South Cicero, sir, for about one year approximately at which time I moved to 113 South Cicero. I was there for four years and since November of 1966 I have been in the office in Laramie and Quincy, which is 214 South.

Q. That is the office that is involved here? A. Yes, sir.

Q. On September 2nd—On August 24th, excuse me, 1967, did you have any conversation with any people in the Organization for Better Austin, the defendants in this complaint? A. If Mrs. Zimpardi is one of the members of the O.B.A., I did have a conversation with her.

Q. She's a member, yes. Do you remember what the occasion for the conversation was? A. Yes, I had distributed cards which had no ethnic overtones—

Q. Objection. [17] A. —in the neighborhood. Mrs. Zimpardi called me at home. In fact, she came to my office and sought out my services as a real estate broker and I did go to her home and look through it, yes, definitely, in answer to her request.

Q. Did you— A. Yes, sir.

Q. Would you describe this card you say you passed out and how you passed it out? A. How?

Q. Where it was passed out. A. It was passed out I would say Laramie to Central generally and from Washington to Lake Street.

Q. From door to door. How would you do this? Did you just walk up and down the street giving anyone who wanted it? A. No. It had two little boys distribute them.

Q. To the doors of the homes? A. Yes.

Q. In those blocks? A. Yes.

Q. Would you describe what the cards said? A. It said in general we invite your listings and [18] it gave our name and address as realtor.

Q. Did these cards go to people who had expressed some intention to sell their home or move from Austin? A. No, sir, it was indiscriminate. It was passed out indiscriminately. We are not selective.

Q. Now, you say that these two boys passed these cards out in several blocks, why these two blocks if the people didn't express any specific intention? What was it that led you to—

Mr. Browne: Objection, counsel is arguing with the witness as to why were you and so forth.

The Court: Overruled. You may ask the question.

Mr. Pomrantz: How did you select the blocks?

The Witness: How did I select—It was indiscriminate. There is no malice.

Mr. Pomerantz: Q. I didn't accuse you of malice.
A. It was strictly at random choice and it is a very honest opinion.

Q. Since that time have you distributed these cards in other areas? A. Not since that time, no, sir.

Q. How about before that time, since November of 1966? [19] A. We have distributed them before.

Q. In any sort of pattern or indiscriminately? A. It was at random again.

Q. Would you say all these cards were distributed in the Austin neighborhood? A. Yes, generally in Austin.

Q. Do you remember, Mr. Keefe, when those cards were passed out? A. Prior to Mrs. Zimpardi calling me, which would be—

Q. Several days? A. September, or August 20, roughly, yes.

. . .

Q. You have said that sometime after the 8th of September, people were, people from the O.B.A. were picketing, passing out literature and so forth around [20] your place of business on Laramie Street, is that correct?
A. Yes, that's correct.

Q. Would you describe what they did and be as specific as you can about when they did this? A. If our meeting was September 17th, which was a Saturday at St. Thomas Aquinas, the distribution of the literature and picketing commenced at that time in my own Village and has kept up until today's date around my place of business and in my Village.

Q. Could we treat the two different locations of these activities that you are speaking of separately, so you can describe what it is that happened in front of your place of business and then later we will discuss what it is that happened in your home in Westchester. A. In front of

my place of business, which is at 214 South Laramie, there was picketing on numerous evenings. On Saturdays, there was the distribution of literature impugning my name as a business man in the Austin area. Frequent distributions of hand outs commencing on or about—

Q. What do you mean hand outs? [21] A. Hand outs impugning my name with definite adverse information about my reputation as a business man in the Austin Community.

Q. Would you describe the type of activity that took place in Westchester during this same specific period? A. During this period of time commencing September 17, 1967, there was the distribution of the same type of literature in my own immediate home area. The sending of a telegram to the Westchester News attempting I would say to put me in a very bad light for non-proven, I would like to emphasize that, charges in my own area and it commenced September 17th and continued until a very short time ago.

Q. They weren't charging you with activities were they? A. They were charging me with activities in the Austin area, malpractice of real estate in the Austin area.

Q. Now, you mentioned September 16th, I believe, it was the 16th or 17th, that these activities began. Did anything happen prior to that time in Westchester; did anyone come to your home or have anything to do with you? [22] A. Yes, yes. They came to my home and attempted to arrange a meeting which I did go to.

Q. Do you remember when that was? A. It was on the morning of September 17th. I remember it very clearly now. My wife called me.

Q. It was a Saturday or a Sunday? A. Saturday, September 17th.

Q. I think it was the 16th, your Honor. A. I am sorry, that's right.

Q. Just so we don't get it confused.

I apologize your Honor, it was a week earlier, September 9th, just so we get this straightened out. Does that sound right to you? A. It is highly possible.

Q. They came to your home in Westchester to arrange a meeting with you? A. Yes.

Q. And you said you did arrange at the time to meet with these people? A. Yes, I not only arranged it, but met with them.

Q. When was that? A. You are telling me it was the 9th, aren't you?

Q. Was it the same day or a day later? [23] A. The same day.

Q. Did anything happen after that meeting? A. I would say, can I go back a little bit to the meeting itself?

Q. I think you testified that the people presented grievances or something of that sort at the meeting. What happened after the meeting? A. I refused to sign the pledge. After the meeting I went to my Village. Then started the distribution of this highly inflammatory material impugning my reputation as a business man.

Can I retrace for just a second?

The Court: Just answer the question.

Mr. Pomerantz: I would like to go back to this meeting. People came to your home and the meeting was arranged for later in the day at St. Thomas Aquinas. You said already they explained some of their grievances to you about doing business in Austin, is that correct?

The Witness: That's correct.

Mr. Pomerantz: Now, was this a round table meeting or was it just a free flowing discussion? A. It was very

well conducted by Mr. Holmes and [24] Mr. McCarthy. It was very intelligently conducted. They entertained one question at a time. Under the circumstances where I was by myself, I was fort of on the spot you might say, frankly speaking. I feel I answered the questions to the best of my ability.

Q. Did you have an opportunity to say anything you wanted to and asked them questions if you wanted to?

A. I felt I was the one that was being asked the questions.

Q. Did you ask any questions of the people? A. Yes.

Mr. Browne: I will object to this line of questioning. I still fail to see the materiality. In what connection, what justification does it give anybody to slander the man and publish these articles in the paper and a picture of his business in the newspaper. Since when does that justify anybody doing that.

Mr. Long: There has been no tie up between the paper and the Organization for Better Austin.

The Court: The paper was put in evidence.

Mr. Long: And secondly, this is a court of [25] equity, your Honor.

The Court: Objection over-ruled.

Mr. Pomerantz: If I may back up a short step then. It was an open type discussion and you could have asked the question. There was no big inquisition, but conversation back and forth trying to answer each others problems?

The Witness: Yes, it was very intelligently handled, that's correct.

Q. And then you said that you refused to sign the agreement, isn't that correct? A. Yes, that's correct. I felt—

Q. Your characterization is already in evidence. If that is your characterization, it is fine. I didn't say we agreed, I said, it is fine.

You refused to sign this document. Who asked you to sign the document? A. Mr. McCarthy. He turned to me and asked me to sign the pledge.

Mr. Browne: Keep your voice up.

The Witness: He said, we have had enough conversation. Now, we want you to sign this pledge and [26] I absolutely and positively refused. It went beyond the Illinois State Laws with the City's Open Housing Laws. Yes.

Mr. Pomerantz: Q. In what way did it go beyond those laws? A. It didn't let me solicit at all which goes beyond the City and State Laws.

Q. When you say solicit, what do you mean? A. When I say solicit, I don't know what your connotation of solicit means, it means I actively seek out a seller.

Q. I am sorry? A. I actively seek out a seller.

Q. How? A. By flyer in this case.

Q. Are there any other ways? A. Yes, phone calls.

Q. Personal visits? A. Personal visits, yes.

Q. To people who have or have not asked you, whichever the case may be, or expressed the desire to sell? A. Yes, that's correct. I have the right to solicit.

[27] Q. Is this the general way you have conducted the real estate business since '61 when you were licensed as a broker? A. Not necessarily, no. A lot of times I got referrals from other sellers. Occasionally I actively solicit, yes.

Q. Did you always have to solicit wherever your business was established; this is the way you go about it? A. Not necessarily, no.

Q. Have you? A. I have solicited in the past, yes. It is within my boundaries.

Q. And your boundaries are determined by generally where your place of office is at? A. By boundaries, I mean City and State laws.

Q. The method—I am talking about geographical area?
A. Nothing.

Q. But the geographical area in which you operate is generally determined by where your place of business is located, is that correct? A. Yes. I think that you will find it will apply to [28] any broker in general.

[29] . . . Q. You have mentioned something about being cleared by the Department of Registration. Would you kindly explain what you mean by that? [30] A. Yes, absolutely, I met with them Wednesday morning and the complainant, Mrs. Zimpardi, was there, Rev. Johnson was there. I don't know if it is Father, and who else?

Q. Somebody from the O.B.A.? A. Two representatives from the O.B.A. Mr. Trapp, I believe was one of them.

Q. What was the occasion? A. The occasion was a citation, a complaint signed by Mrs. Zimpardi and filed with the Department of Registration and Education and a hearing officer, Garry Edelman (phoenetic), he heard the case and he concluded there was no panic selling and the case was dropped with the Department of Registration. And the other complainant, Mrs. Andoska (phoenetic) evidently with-drew her complaint and did not appear. Now, her complaint has been dropped also by the Department of Registration. So Mr. Edelman felt there was no panic selling.

Q. What were the people that filed these complaints complaining of? A. Panic selling, if that's a word.

Q. Yes, panic selling. By this procedure, they [31] tried to have the Department take some action? A. Yes.

Q. What action was that? A. They tried to have my license revoked.

Q. As a real estate broker? A. That's correct, in the State of Illinois.

. . .

[32-33] . . .

[34] . . . Q. Now, you have also stated that you absolutely don't discriminate in the sale of homes? A. No, sir, I don't.

Q. I am sorry I have to ask you what you mean by the word discriminate? A. Discrimination means the refusal to sell to any [35] race and as a licensed broker, I really can't do that.

Q. Does it refer as you were using it to any other sort of discrimination? A. You will have to clarify that.

Q. What I am interested in is the practice of not making a home available to everybody, but to discriminate against the clientele, to search and seek out as to the prices? A. My homes are open to any race that wishes to buy and at the same price. I don't discriminate one race with another as far as price, if that is the point you are making.

Q. That's what I was asking.

Your Honor, that's all we would like to ask since this is a hearing for a preliminary injunction, I assume we can reserve the right to recall Mr. Keefe for the full hearing?

The Court: Yes. Are you through with the witness?

Mr. Pomerantz: Yes.

The Court: Do you have any re-direct?

Mr. Browne: No, your Honor.

The Court: You are excused.

[36] JUSTIN McCARTHY, a witness called on behalf of the defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. Would you state your name and address? A. Justin McCarthy, 5353 Washington Boulevard, Chicago, Illinois.

Q. Where are you employed, Mr. McCarthy? A. Where I work every day?

Q. Yes. A. Chicago Newspaper Guild.

Q. And what office, if any, do you hold in the organization for Better Austin? A. I am the President.

Q. And how long have you had that position? A. Since June 11th of this year.

Q. And is the job of the President that of the Chief Official of the organization? A. It is.

Q. Now, Mr. McCarthy, would you briefly tell the Court what kinds of activities the organization engages in, what are some of the major problems? [37] Why does this organization exist? A. The Organization exists as a forum and meeting place to an organization of a great number of groups upon which they can discuss the problems of the community and find solutions; also to find resources and ways to implement the solutions.

Simply put, the major problem of the O.B.A. is presently to stabilize the overall Austin community. The organization has committees. One of the most active, if not the most active is the Real Estate Practices Committee of the organization.

It's objective, of course, is to see insofar as it can, that the practices of the activities affecting real estate do not negate the possibility of stabilizing Austin. Two

prime targets of the Real Estate Practices Committee are panic peddlers and slum landlords.

The housing committee of the Organization for Better Austin would be a committee concerned primarily with slum landlords and of course, the Real Estate Practices is concerned with panic peddlers.

We also have an Education Committee which is concerned with the problems of the schools in Austin, [38] the orderly, tranquil, peaceful integration of the schools is possible. The level of the education and the instruction given in our schools, all the problems affecting the Austin schools are related to the problems of stability in Austin and of course this committee is concerned with them.

We have a Youth Committee which is presently active working with youths in the community. They are trying to do what they can in that area.

We have a security Committee which maintains relations with the Police Department and it has to do what it can to keep stability and whatever matters arise out of Austin, which would affect the security, peace, tranquility of Austin. Now, are those enough committees?

Q. That's an adequate description. Is this organization racially integrated? A. Yes. By racially integrated you mean black and white people and people of all—

Q. Are they all members of the organization? A. Yes, by groups.

Q. Now, you speak of racial problems in Austin, would you give us an idea exactly what you mean by [39] racial problems? Can you be more specific? A. Well—

Q. Relate your remarks especially to housing. A. Well, a major racial problem, of course, is the exodus of white people from the community, which is facing changing conditions. The panic of white people who for one reason or another may be fearful of economic, the loss of prop-

erty values because of the moving into of their neighborhoods of negro people, very simple.

Q. Mr. McCarthy, are you objecting to the entry of negro people into the community? A. No, no.

Q. Then, would you tell the Court what kind of pattern is bothering the organization so much? A. The pattern is a reverse integration, actually. At the southern border of Austin at the moment is an integrated, no, is a segregated community, a black segregated community. The borders of the black segregated community traditionally thus far, up to the borders of Austin, have relentlessly and irresistably moved toward Austin.

Q. What are the boundaries that you are referring to? [40] A. I can say roughly about Cicero Avenue. From there east you could say that is a segregated community. West of there, there is an area of integration in various degrees and further west, let us say, there we will get to the suburbs further west.

Q. When, to your knowledge, did Cicero or when was the last time that Cicero in your opinion would not be a predominately negro area, the area which you bounded at the east by Cicero and coming a few blocks west? A. Would not be the boundary until I would say three, four years approximately. It wasn't integrated as absolutely as it is now. There has been a very radical change in this recent couple years.

Q. Now, Mr. McCarthy, you were in Court when Mr. Keefe said that within the past year, he has changed his office from Cicero Avenue to Laramie. Could you tell us something about the Laramie location in terms of your analysis of the change of the boundary change of the Austin area? A. It is the outpost, it is in advance of the absolutely integrated black part of Austin.

[41] Q. Laramie is further west than Cicero? A. It is a guide on the advance of the frontier we are talking about, this integrated frontier.

Q. Are you saying, it is on the western boundary?

A. Yes. It is actually, it is one mile or a mile and a half mile west of Cicero Avenue.

Q. In your experience have the boundaries been coming progressively west, the boundaries of this racial difference? A. Yes, yes.

Q. What kind of a program would you propose, or has your organization proposed for this boundary areas with respect to real estate? A. So that the overall problem can be treated rationally, we think the first things that have to be stopped are the panic peddlers and they are number one, and the second thing that must be stopped is the absentee or the slum landlord present in Austin.

We have to have time to do something about all the other problems of overall integration, but if we are going to be able to make the buck stop in Austin to wield together a community of the kind [42] we are hoping for, then we will have to stop these opportunists for taking advantage of a situation and changing neighborhoods.

Q. Mr. McCarthy, you have been with the organization as you told the Court a while and you had dealings with the problems in Austin, in your experience what does it take in a boundary area to force white people to leave en masse? What kind of activities are you protesting against that you believe has this effect?

The Court: Let's confine ourselves. Let's confine it to what he is doing.

The Witness: Well—

Mr. Pomerantz: Yes?

The Witness: I believe the plaintiff's mere presence in the neighborhood, your Honor, is enough to panic those susceptible to panic and this is what we are talking about, those susceptible to panic. We are trying to keep them to stay long enough to be educated. I think the plaintiff's mere presence in the neighborhood and certainly direct evidence of his activities in the neighborhood is enough to panic them.

The Court: What are they?

[43] The Witness: The passing out of leaflets. At this point, I suppose, somebody could point to the plaintiff in any given neighborhood, if he would have his business there and this would panic them.

. . .

[44-46] . . .

[47] . . . Mr. Long: Mr. McCarthy, is this the card you are protesting about, the distribution of?

A. That's right.

The Court: Where did you obtain that card?

The Witness: Father McKenna picked these up, your Honor.

The Court: Is Father McKenna here?

Mr. Long: I don't believe he was able to make it today, your Honor.

The Court: Does your client admit it?

Mr. Browne: Of course, he does.

The Court: Let's see it.

Mr. Browne: Find out if it is degrading, defamatory or whatever it is supposed to be according to their interpretation.

Mr. Long: I believe that is misinterpreting it.

The Court: Well, I take it from what I have heard so far, the literature Mr. Keefe passes out—

We invite your listing. We have prospective buyers for income property and residential property in the Austin Area. Jerry's Real Estate, 2140 South Laramie, Chicago, Illinois. Phone: Jerome Keefe, [48] Realtor, 378-8993. Is that it?

The Witness: That's right. That's what they been handing out.

The Court: How would that create panic?

Mr. Long: Your Honor, the problem is one where what is left unsaid is often more important than what is said.

The Court: What's so bad about soliciting business?

Mr. Pomerantz: Your Honor, perhaps there is a misunderstanding. Mr. Browne has just remarked or characterized this pamphlet as one that is derogatory, insulting. Now, if this is the issue—

The Court: I am talking about the pamphlet. This witness says this pamphlet creates panic in the owners of real estate. I have just read what that said. Will someone point out to me how that could possibly create panic?

Mr. Pomerantz: What the organization is concerned with, it is the pattern of distribution, your Honor. Nobody would contend if a real estate agent sent a card to every person, that anyone would assume that he is panic peddling. But where there is a pattern [49] of real estate with the expansion of the ghetto and these leaflets passed out in specific blocks only on the margin of that area, where Mr. Keefe said he only passed them out, that's panic peddling.

The Court: All it states is, We invite your listings. All brokers solicit business.

Mr. Pomerantz: That's correct. That's the only way they can get business.

The Court: A lawyer cannot do it. If he does, he is disbarred but a real estate broker may solicit business.

Mr. Pomerantz: It is not necessary to our defence he is breaking the law.

. . .

Mr. Long: Mr. McCarthy, let's go to the date of September 9, were you people at a meeting with the plaintiff, Mr. Keefe?

The Witness: Yes.

Mr. Long: Q. Would you tell us briefly what transpired at that meeting? [50] A. I was in the chair presiding. Mr. Keefe sat on my left. Mr. Holmes and Mr. Ed Fisher, I believe, on my right and it may be Mrs. Selzer on the far left on the otherside of Mr. Keefe and persons who are residents in the community, the Latrobe, Lockwood blocks, people who lived around this area of distribution. A couple police officers were there. Mr. Keefe was invited to answer questions. The people in the audience asked him questions. They expressed their feeling about his activity in the community, specifically on the solicitation.

Mr. Browne: Objection. This is all hear-say.

The Witness: I was there.

The Court: He was there. Tell us who said it.

The Witness: Mr. Keefe said in response to a question on the subject of panic peddling, Quote: Perhaps, I was overly aggressive, unquote.

He also indicated at one point in answer to other questions, quote: that the bulk of his buyers were negro people, unquote. The questions and answers went back and forth on this theme.

. . .

[51-53] . . .

[54] . . . Mr. Long: Q. All right, your Honor, I would like to go over briefly the pamphlets distributed by the

O.B.A. so you will have an opportunity to see it. I want to go through September 9th, that has already been introduced by the plaintiff.

Mr. McCarthy, on September 16th, do you recall any leafleting by the organization in the neighborhood of the plaintiff? [55] A. The 16th?

Q. I believe that was a Saturday. A. This was the last occasion of that day. We went back to Westchester, if I am right on my dates.

Q. That's the week after the 9th.

The 9th is, as you testified, the first date that you had with Mr. Keefe? A. Oh, yes, yes. I believe that was the day we passed out, passed out leaflets in a shopping center. This was a Saturday too.

Q. The 16th? A. Yes.

Q. Calling your attention to this mimeographed sheet, was that distributed on the 16th? A. Well, I believe this is it.

Q. Could I have this marked, Defendant's Exhibit Number One, please? I submit this as Defendant's Exhibit Number One, your Honor, as the leaflet—

The Court: You are offering it at the wrong time. You will have to wait until your case is on. Any objection?

Mr. Browne: Objection.

The Court: Very well.

[56] Mr. Long: Mr. McCarthy, will you tell us in detail the distribution of that leaflet on the 16th?

The Witness: A group of us met, again at St. Thomas Aquinas. We took a bus, some took their own private automobiles, and went out to the shopping center.

Mr. Long: Q. What shopping center is that? A. I don't know the name of it. It is in Westchester.

Q. Do you know the address? A. I don't know the address either.

Q. Was this leaflet passed out in the neighborhood of the plaintiff? A. I don't recall.

Q. All right, calling your attention to Sunday, September 17th, what, if anything, did you do with respect to this matter? Did you pass out the leaflets? A. I, along with Father Don Ryan, went out and passed out another message in front of Devine Infant Church in Westchester.

Q. When did you arrive? A. I was there about 11:00 in the morning.

Q. It is that leaflet, the one that was passed out [57] on that date, could you tell the court? A. I believe it is, yes.

Mr. Browne: It may go in. That's the basis of our complaint.

The Court: Any objections?

Mr. Long: Were there any distributions at Devine Infant's Church?

The Witness: No.

. . .

[58] . . .

[59] *Cross Examination by Mr. Browne.*

. . .

Mr. Browne: Q. Mr. McCarthy, how many real estate brokers are there in the Austin area? A. At the moment about 97 new ones and I don't know the exact number of established for a long time.

Q. Would you say there are about 100 there? A. I would say at this point, there are.

Q. And of course they buy and sell, they procure real estate all over the Austin area, is that right? A. Well, I don't know that.

Q. What? A. Some do and some don't, I suppose.

Q. Can you tell us what the percentage of negro real estate owners are in Austin? Can you tell us what percentages are there now? A. I don't know. I am not competent to—

Q. Is it 25 percent, ten percent, 70 percent?

Mr. Pomerantz: He said, he doesn't know.

The Court: He doesn't know.

The Witness: I am not competent to answer that question.

[60] Mr. Browne: Q. Now, do you know whether Mr. Keefe has sold real estate to every negro family or every negro real estate owner in that area? A. No, I don't know that.

Q. Do you know if he has sold to every negro family in that area; has he sold real estate to them? A. I could speculate, but it isn't probable he has.

Q. In other words, there are other real estate brokers who have sold real estate in that area? A. I don't know. I don't know. I have no personal knowledge of this. Do you want me to make an assumption?

. . .

[61] . . . Mr. Browne: Have any other real estate men in the Austin section signed any agreements with your organization as to how they are going to sell?

. . .

The Witness: Yes.

Mr. Browne: How many have signed the agreements?

[62] The Witness: I know of at least three, maybe more.

Mr. Browne: Q. Three out of 100 real estate men, is that right? A. Yes.

. . .

[63] * * * Mr. Browne: * * * Now, Mr. McCarthy your organization is primarily interested in stopping the spreading of negro people coming into Austin, is that right? A. That's wrong.

Q. You are not opposed to any of the negro people coming into Austin and buying property there? A. No.

Q. Can you tell me if your organization for Better Austin has negro members? A. Yes.

[64] Q. I show you the—Is that your stationery by the way, Mr. McCarthy, is that your stationery?

The Court: Is that marked for Exhibit for Identification?

Mr. Browne: No, I am sorry. I better mark that. Now, I show you Plaintiff Exhibit Number Six.

(Whereupon Plaintiff's Exhibit Number Six was marked for Identification.

I ask you to look at the printing on the left, on the left here. I want you to go down the list of all of the names you see there, and point out who are negro members?

Mr. Pomerantz: Objection, your Honor.

The Court: Over-ruled.

The Witness: Jesse Madison, Treasurer, Mrs. Ella Daggett (phoenetic) Vice President, Homer Gardiner (phoenetic) Co-Chairman of the Housing Committee. These are I am certain, there are negros.

Q. In other words, three. Incidentally you have no idea how many negro families are living in the Austin section?

A. No, no, no.

[65] Q. You don't know? A. No, no.

* * *

Q. I guess, that's all.

The Court: No re-direct

Re-direct Examination by Mr. Pomerantz.

Q. Just one more question: There was one discussion of picketing characterized by Mr. Brown of marching up and down at Mr. Keefe's place of business on Laramie. Will you describe the activities of the members of the O.B.A. on the day you were speaking of in front of his place of business? A. Simply walking in an orderly picket circle a number of feet apart, not blocking the egress of the office, simply advertising the grievances of the people.

Q. Where exactly geographically were you walking? A. We were limiting ourselves to the front of the exact limits of Mr. Keefe's office, as the office faces on Laramie Avenue.

Q. Were you on the street? A. On the sidewalk.

Q. That's all.

[66] The Court: How many were there?

The Witness: I guess at any one time not more than 30 and of course, there were comings and goings all the time.

The Court: There are signs, four signs?

The Witness: Oh, no, there were many more than four signs. These pictures only capture four pickets.

Mr. Pomerantz: One more question, would you describe the conduct of the people?

The Witness: Very orderly.

Mr. Browne: I don't care what the conduct is, it doesn't give them the right to picket without justification?

The Witness: They were very orderly and they were instructed to be orderly and gracious with the passers by, and as usual the police were witnesses.

Mr. Pomerantz: The police were there you say?

The Witness: Oh, yes.

Mr. Pomerantz: Q. Why did the police come? A. Apparently, somebody called them.

Q. Do you know who called them? A. Someone always does. I don't know.

[67] Q. Were there any fights going on like that? A. No.

Q. With anybody? A. No.

Mr. Browne: Just one question, Mr. McCarthy, did you know that Mr. Keefe's place of business was burned down three weeks ago?

Mr. Pomerantz: Objection. That's not right.

The Court: If he knows, let him answer.

The Witness: Yes, I know, sure.

Mr. Pomerantz: You are done?

Mr. Browne: No, I am not done. And, of course, nobody from the O.B.A. had anything to do with it, did they? The burning of his place—

The Witness: No, no, they did not.

Mr. Browne: And out of the 97 real estate brokers, could you tell us why Mr. Keefe's office was selected to be burned?

Mr. Pomerantz: Objection, Judge, please.

The Court: Sustained.

Mr. Browne: That's all.

Mr. Pomerantz: Mr. McCarthy, there was a fire?

The witness: Yes.

[68] Mr. Pomerantz: Q. In Mr. Keefe's office? A. Yes.

Q. Excuse me, you already testified to this. Did you have a conversation or any discussion with anybody concerning that fire? A. Well, I have people call me up on Sunday to tell me about it, certainly.

Q. Did you have a conversation or discussion with anybody connected with any official investigatory agency?

A. No, no, I didn't.

Q. That's all.

Mr. Browne: Mr. McCarthy, do you know whether Mr. Keef's lease was cancelled at his place of business? A. I read about it?

Mr. Browne: Where did you read about it?

The Witness: I think in the Austinette. (phoenetic)
I hate to admit, yes.

Mr. Browne: Q. Only in the Austinette? A. I don't know. It may have been also in the Austin News.

Q. Besides that, where else?

[69-70 * * *

[71] * * * DOROTHY SELZER, a witness called on behalf of the Defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. State your name and address? A. My name is Dorothy Selzer. I live at 5961 West End Avenue in Chicago.

Q. How long have you lived there? A. Five years.

Q. Are you in any way connected with the organization for Better Austin? A. Yes. I am a member of the organization.

Q. Do you hold any official position? A. I am on the membership committee as co-chairman and work with some of the other—

Q. Now, Mrs. Selzer, were you present at the meeting [72] with Mr. Keefe in St. Thomas Aquinas in early September? A. On one I was. I believe the 16th. It may have been the 9th. I am not sure about which date it was.

Q. Do you remember anything about that meeting, how it was conducted, who was sitting where, anything like that? A. Yes. Mr. Pete, Mr. McCarthy, I am not sure of Mr. Holmes and Mr. Ed Fisher, I believe.

Q. Were questions asked back and forth? A. Yes.

Q. You have heard the description of the meetings?
A. Yes.

Q. Is that accurate? A. Yes.

Q. Do you recall anything that Mr. Keefe said in response to any of the questions? A. Well, he was asked about how his selling procedure—He did make one statement that he only sold to negroes.

Q. Did he say anything else? A. No white market.

[73] Q. I don't understand? A. He said there is no white market.

Q. There is no white market in Austin. In other words he cannot sell to other people? A. That's right.

Q. Was the meeting conducted in an orderly fashion at all? A. Yes.

Q. Mrs. Selzer, did you ever go to Westchester alone or with any other people? A. With other people.

Q. Would you pick any date that you can remember that you went out there and tell us just what you did?
A. I picked Saturday, the 16th. I was with a group when they approached Mr. Keefe to try and get him to come to talk with the O.B.A. back at St. Thomas Aquinas Church and he met us there this Saturday just mentioned. We went back to Westchester to pass out literature.

Q. That was after the meeting? A. Yes.

Q. When you say you passed out leaflets, will you tell us just what you meant? [74] A. Well, in my particular case I went from door to door and put it in the handle on the screen door.

Q. What was the leaflet, one of those— A. What has been presented.

Q. Was anybody with you door to door, or did you go along? A. My husband and Al Hurd (phoenetic), who is a negroe man.

Q. Were the three of you going door to door? A. We left that way and after we got up to the block a little ways, we decided to take separate blocks.

Q. Each one took a separate block? A. And then came back and met again.

Q. Now, when you walked up the sidewalk to the people's home, what did you do, you said you put it in the handle, did you do anything more? A. No. If they asked us what we are doing, we told them we had a panic peddler in Austin and we wanted Westchester to be aware they might be next.

Q. Did you ring the door bells? A. No, I did not. If they were inquisitive about [75] what that literature was—

Q. Now, your Honor to save time, I would like to ask Mrs. Selzer if this is the same type of activity she engaged in on any other days she went out, so we won't have to quibble about it, is that all right?

The Court: No objection, no objection.

Mr. Pomerantz: Did you go out on any other days?

The Witness: Yes. I went out two times.

Mr. Pomerantz: Q. Was the conduct similar?

A. Same. Yes. The last time we went to places of business instead of homes. My particular group did.

Q. Did you have any trouble at any of these homes with these people? A. No.

. . .

Cross Examination by Mr. Browne.

Q. Mrs. Selzer, when you went out to Westchester you passed out certain pamphlets, is that right, or [76] plug-gers? A. Leaflets, we call them.

Q. Is this one? A. Yes.

Q. Now, pardon me—This remark I only sell to negroes, is that why you had passed out these pamphlets to the people in Westchester because of the remark, I only sell to negroes? A. No, I don't believe we would say that was the only reason.

Q. Then why was this put in the plugger then? A. We was trying to get him to come to an agreement that he would sell both to negroe and white and not pursue the negroe market.

. . .

[77] Mr. Browne: Then you talked to just one person?

. . .

The Witness: Did we talk to him only?

Mr. Browne: Yes.

The Witness: No, we didn't talk to him only. You mean on that one meeting or as an organization?

Mr. Browne: Q. At all the meetings you attended. A. In regards to this?

Q. Where Mr. Jerry Keefe was the subject of your meetings— A. Yes.

Q. —to have him change his method of selling and one of his methods were to sell to negroe people, were you opposed to that method? A. Only, yes, sure.

Q. In other words, you are opposed? A. We want both classes represented, not just the Negroe market.

[78] Mr. Pomerantz: Your—I am sorry, ask the question.

The Witness: That what you want to know?

Mr. Browne: In other words, what I want to know is that you try to make him change his way of selling (Strike that)

I want to know is whether you opposed, whether you were opposed to his method of selling only to negroes or

to what? A. We are opposed to the method he is using to panic the white seller to selling.

. . .

[79] . . .

[80] . . . Q. Have you listed your property for sale?

A. I have not. I have not listed my property for sale.

Q. Are you contemplating on listing your property for sale? A. I will not.

Q. Are you fearful that if negroes move into your block that your property will depreciate in value? A. Not just one family, but if it keeps progressing block by block, we all know it always has.

Q. Therefore, you are fearful it might happen to you, is that right? A. Well, how can we escape it?

. . .

[Volume II of the Transcript of Proceedings]

[1] . . .

[2] . . . WILLIAM A. HOLMES called as a witness on behalf of the defendant herein, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pomerantz.

Q. Mr. Holmes, will you state your name and address?

A. William A. Holmes, 5427 West Gladys.

Q. And, you are one of the defendants in this case and associated with the Organization for a Better Austin?

A. Yes, sir.

Q. What capacity do you serve in it, if any? A. I am Chairman of the Real Estate Practices [3] Committee. One of three chairmen, I should qualify.

Q. Mr. Holmes, do you recall any activities on September 9? A. Yes, sir, I do.

Q. Related to this controversy. Did you participate in any of them? A. Yes, sir.

Q. Would you tell us what you did? A. Yes, sir.

The people from the Latrobe-Lockwood Block Club, and Real Estate Practices Committee came together in the morning of that day, to seek some sort of redress for what they felt was something that they didn't like about Mr. Keefe's practices in that block. And, we proposed that because of the fact that prior to this time, we had picketed his office and Keefe had failed to meet with us on the previous Saturday at the Austin "Y", and during the week, we picketed him trying to force him to come and meet with the people, because he failed to meet with us; we decided [4] that the next step would be to reach where he lived; in other words, to go to Westchester and ask him to come and meet with us there.

So, the group got together with the Latrobe-Lockwood Block Club and members of the Real Estate Practices Committee and went to Westchester, Keefe's home, for the purpose of seeking a meeting with Keefe and, you know, for the purpose of handing out flyers on him, unless Keefe, you know, agreed to come and visit with us.

Q. Did you go to his home in the morning? A. Yes, sir.

. . .

Q. What transpired there? A. Well, several of us, Mr. Coment (phonetically) from the Latrobe Block Club, Justin McCarthy and myself, went to the door and talked with Mrs. Keefe and intimated to her that we had these flyers and—

Mr. Browne: I'm going to object to any conversation with Mrs. Keefe—

The Court: Sustained.

Mr. Browne: —unless Mr. Keefe was present.

[5] . . . Q. What happened when you were there, what did you—not talking to Mrs. Keefe—what did you do?

What was the next step after getting to the door and finding Mr. Keefe was not at home? A. We tried to arrange a meeting with Mr. Keefe and—

Q. Was the meeting arranged? A. Yes, sir, it was.

. . .

[6] . . . Q. Then, what happened after the meeting was arranged? A. We returned back to Westchester—Austin, excuse me, and we had an appointment to meet with Keefe at one o'clock, at Saint Thomas Parish—

. . .

Q. Was this meeting held? [7] A. Yes.

Q. And he appeared at the meeting? A. Yes.

Q. Would you describe the meeting to us, the sort of conversation that went on? A. Yes, sir.

Our position at the meeting was that most of the people of the Latrobe Block Club were in a position, had a feeling of protest about Keefe's solicitation in that block, and what we wanted out of Mr. Keefe was an act of faith, if you will, in the community; some signed statement to indicate that he would no longer harass the people by that method that they felt was offensive to them, namely, to stuff their mailboxes and make phone calls and personal visits and things like that.

Q. Was Keefe given an opportunity at the meeting to pose questions and answer questions posed to him?

A. He answered questions that were posed to him.

Q. Do you recall directly any of the questions and answers that occurred? [8] A. Yes. One of them was, "had he ever done business in anything but a racial changing neighborhood," and he said, "no, that he never done business"—

Mr. Browne: If Your Honor please, I will object to the line of questioning—raises issues not before the Court.

The Court: Objection over-ruled. Go ahead, please.

Q. Thank you, Your Honor.

Would you go ahead, Mr. Holmes, if anything else?

A. Yes.

When confronted, Jerry Keefe made a statement that he only, you know, sells to high—if I remember the exact term—high caliber Negroes, and that one of the Negroes in the audience asked what he means by high caliber, and Keefe said, “well, he visits their homes sometime, to check their credentials out,” to see that, you know, he got—and the Negro said, “what do you mean by high caliber; isn’t the only thing you are concerned with is that they can make the down payment,” and [9] Jerry Keefe nodded and said, “yes.”

And, I remember one other statement that, which was—had a lot of people a little excited, was the statement that—

Mr. Browne: Object to excited and all that—

The Court: Let’s find out.

Mr. Browne: I’m going to object further to the man’s comments on what he thought, and I am going to object further to the comments about what he thought, what the other people thought.

The Court: Strike it out. Just tell what was said.

A. All right, one of the statement which stuck in my mind, personally, was that he said he bought—has bought a number of homes in racially changing neighborhoods and when asked whether you have tried to panic them—

. . .

[10] . . . The Court: Over-ruled, go ahead, continue the statement.

A. Well, they asked mainly if you are trying to panic them out, Jerry said, “No, nobody is forcing them to sell

to me," you know, and these are some of the statements that I remember out of the meeting.

Q. What happened after the meeting? A. Well, it seems that the meeting had got to an impasse; Jerry refused to sign and the people tried to argue with him, after a point, they reached—they decided—let's not listen to any more, let's go back out to Westchester.

Mr. Browne: Going to object to the—

The Court: Strike it out.

Q. What actually happened, not imagination or opinions, what did you personally do? A. We went to Westchester and handed out flyers.

Q. When you say you handed out flyers, what exactly do you mean? [11] A. I think, well, we placed flyers in the screen doors of various homes on Keefe's block, we handed flyers out in the shopping center in Westchester by the Jewel and National Food Stores, and generally just distributed flyers—

Q. Did you have any trouble? A. None.

Q. Anybody start fighting, did you start to fight out there? A. No.

Q. Did you, Mr. Holmes, go to Westchester the following Saturday, the Saturday, the 16th? A. Yes, sir.

Q. Back tracking from that Saturday to the 14th—
A. Yes, sir.

Q. —the Thursday before, can you tell us what your actions in connection with this dispute were on the 14th? A. Yes, sir. On the 14th, Vice President Justin and myself were involved—talked to Father Langan of Divine Infant, to a—I don't know what you call it, like, I guess it could be like a [12] consultation type of hearing which was held in the rectory of Divine Infant.

Q. Excuse me, what is Divine Infant? A. A church.

Q. Where is that located? A. Well, it's Jerry's

parish, I don't know the specific street address it was, right about in the middle of town, I guess—

Q. Okay. A. But, at this hearing, Jerry Keefe and his wife were present. I don't remember the lawyer's name who was acting as sort of a friend to both sides, trying to reach some sort of agreement, and Father Langan was there.

And the gist of it was we came back with this two sided type of agreement, our original agreement which I think was "A" and Jerry's proposed alternate, which was "B" or vice versa—I think it's part of the evidence here—and was offered at that time, was that, you know Jerry said that "I will make and sign this type of agreement, and as an alternate to the one that you are offering, which I would refuse to sign."

[13] And, I intimated to Jerry it's up to the people to decide whether that—you know, I can't accept the signature—in other words, I am here on advice of the committee; it's up to the committee whether they will accept or reject this statement.

. . .

[14] . . .

[15] . . . Q. Did you distribute anything or go to Westchester on the 17th of September? A. Yes.

Q. This would be Sunday? A. (Shaking head)

[16] Q. What did you do then? A. Handed out flyers at Mass.

Q. Where? A. Divine Infant, same parish.

Q. Same parish.

Do you recall who you handed them out to? A. Parishioners coming from Mass and going in.

Q. Did you go inside the building? A. No.

Q. Do you have any idea how many people were there then? A. You mean in our group or in Mass?

Q. With you—I am sorry—from your group; how many people were handing out leaflets? A. I'd say, you know, we have quite a few activities, I can't remember.

Q. Okay. Do you recall any people that were arrested, any fights that anybody got into or anything like this, any disturbances? A. Not outside of one statement someone made to me.

[17] Q. What was that statement? A. One of the Westchester people came out and said, "don't you realize this is a House of God, and shouldn't be doing this here."

And, I tried to explain to them our position, and he went back in the church and a few minutes later came out with his wife, and made a statement rather loudly that "these people were demonstrating against God." Then he walked down the street—

Q. That's the only thing— A. That was the only thing that stuck in my mind a little bit.

Q. On September 30, did you go out to Westchester? A. Yes, sir.

Q. How did you get there, do you remember? A. If I remember correctly, we all went in my bus, I have a Volkswagen, one group of people.

Q. What did you do there, when you got to Westchester? A. Basically the same thing we had been doing, passing out flyers.

[18] Q. Where actually did you pass them out, do you remember? A. We broke into teams so that a group that was handing out flyers—

Q. Where did you personally hand out flyers? A. I handed them out in the shopping center.

Q. Did you have any difficulty, any fights or anything, with anybody? A. No.

Mr. Pomerantz: Would you mark this Defendant's Exhibit Three for identification.

(Received and marked Defendant's Exhibit Three, for identification.)

Q. Do you recognize this. Don't tell us what it is, do you recognize it? A. I do.

Q. Something on the other side too? A. Yes, sir, I recognize it.

Q. Will you tell us what that is and— A. On one it's the text of an editorial that was given on Channel Five by Len O'Connor, basically on our fight against panic peddling.

[19] On the other side there is material that we had printed on Jerry Keefe; this in fact was one of the flyers we passed out on September 30th.

. . .

[20] Q. You are the chairman of the Real Estate Practices Committee of OBA? A. Yes, sir.

Q. Are you in a position to know a little something about the background history of OBA? A. The background history of OBA extends from June 11, I believe when we formed—

Mr. Browne: What year. A. 1967.

Q. Do you spend any funds? A. Yes, sir.

Q. Where do the funds come from to maintain the organization? A. From my pocket—not the whole organization is.

Q. The whole organization? A. I don't ever spend—

Q. I don't mean your phone calls and things like that outside the organization itself. A. The funds for the organization have been funded from the Austin Clergy Council who put up, I believe it's Eighty Thousand Dollars for the first two years of operation to help the community stabilize itself.

[21] Q. Austin Clergy Council? A. Yes.

Q. Can you be a little more specific as to what you

mean? A. Participating members of—mainly of the various clergy in Austin, Lutheran, Catholic, Jewish—they have funded—

Q. That's all for him.

Cross Examination by Mr. Browne.

. . .

[22] . . . Q. This organization is called the Organization for a Better Austin? A. Uh huh.

Q. You say this was formed when, in 1967? A. June 11.

Q. 1967, is that right? A. Right.

Q. And, prior to that time, was there any other organization in which you were connected, whose objectives were to control the method of operation by real estate men? A. Nope, my first experience.

Q. Now, do you know how long Mr. Keefe has been in that area as a real estate operator? [23] A. Not directly, I am only two years in this area myself.

Q. Are you there just two years, is that right— A. I own a home—

Q. Did you buy property there? A. Yes, sir.

Q. All right, where is your address again? A. 5427 West Gladys.

Q. And, of course having been there for two years, do you feel that the value of your property might be impaired if Negroes move in? A. Yes, sir.

Q. So, that the primary purpose is to prevent the sale of real estate to Negro people is this right? A. No, sir.

Q. Even though it might impair the value of your property? A. I don't consider the movement of Negroes into the community per se means whereby my property value is impaired. I consider panic peddlers responsible for that.

[24] Q. Would you tell us what is a panic peddler?

A. I consider him a person who tries to coerce someone into selling their property for a profit, in other words playing on fears of white people in order to get them to sell their property, then as such he is buying property up and selling to Negroes for a profit.

Q. Do you know of any case when Mr. Jerry Keefe did that? A. Do I know of any case?

Q. That's right? A. Specifically?

Q. Yes? A. No, sir.

. . .

[25-27] . . .

[28] . . . Q. Mr. Holmes, when Mr. Jerry Keefe refused to sign this— A. Yes.

Q. Then you went out with these pluggers to where he lived in Westchester, and passed them out is that right? A. Yes, sir.

Q. And, you did that because Mr. Keefe refused to sign this agreement, is that right? A. Yes, sir.

Q. All right.

In other words, your primary motive was to coerce him to sign this agreement is that right?

Mr. Pomerantz: Let's ask him, Your Honor what his primary motive was.

The Court: He did ask him, is that right.

Mr. Pomerantz: Putting—

The Court: That's proper cross examination.

A. All right, I'll answer that by saying that my primary motive was to ask Mr. Keefe to [29] make a public act of faith in the community where he is making his living, and because he failed to do this—in fact he said that we don't want a thing to do with you, and we don't care about your community—so we went out and decided to let his, let his neighbors know what he was doing to us.

Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right? A. Yes, sir.

Q. Okay, that was your primary motive wasn't it? A. Yes, sir.

Q. All right.

I show you Plaintiff's Exhibit Number Two, and ask you to look at the picture and tell us what you recognize, if anything.

(Plaintiff's Exhibit Number Two in evidence tendered to witness)

A. I see Jerry's office at Fourteen South Laramie.

[30] Q. What else do you see there? A. Four pickets, myself one of them.

Q. You were one of the pickets weren't you? A. Yes, sir.

Q. Is that the method you were going to use to coerce Mr. Keefe to sign this agreement. A. This is one of the methods we used to get Mr. Keefe to come and even talk to us.

Q. Now, — may I have this please? Thank you sir.

When you summoned Mr. Keefe to a meeting, did you construe to him that it was compulsory for him to appear, and subject himself to your questioning? A. No.

Q. It was not compulsory was it? A. No, sir.

Q. So, therefore because it was not compulsory, you were going to use a method to compel him, is that right?

A. That's the normal means of protest.

Q. Thank you, that's all.

[31] *Re-Direct Examination by Mr. Pomerantz.*

. . .

[32] . . .

[33] Q. Mr. Holmes, can you tell us where the words written on the compromise agreement came from? Did your committee for example draft that document? A. You mean the one we proposed.

Q. The one that you are holding, you asked Mr. Keefe to sign, and he proposed an alternate? A. They were identical to the words that we used for another realtor who did sign with us after confrontation, who we had—
• • •

[34] • • • *Re-Cross Examination by Mr. Browne.*

Q. Just one question, Mr. Holmes.

When you were in Westchester, you passed out these pluggers, by putting them into the mailboxes in homes out there, putting them in screen doors and on the porches. Did you do that? A. Yes.
• • •

Q. Now, in your opinion, it was right for you to do that, pass these pluggers out but wrong for Keefe to do it?

[35] A. Except one major difference, we are not making any money out of it.

Q. Is it criminal to make money in this country? A. No, sir.

Q. Honestly of course.

That's all.

The Court: Just a moment.

You called him a panic peddler?

A. Yes, sir.

The Court: Tell me something that he did or said that you know of that in your opinion constitutes a panic peddler? A. We have a complaint on the books, which a public hearing is scheduled for the Mayor's Commission, in which he said to Mrs. Zampardi on Lockwood,

when she asked Twenty-eight thousand dollars for her house, he said no, Twenty-one thousand dollars plus six percent commission, and in the same sentence, you know Negros are coming in, and said in fact I only sell to Negros, so when you are ready to do business—

Mr. Browne: I'm going to object to that [36] because—

The Court: Well, were you there when he said that.

A. No, sir, this was on her complaint.

The Court: You don't know that he said this. A. All I know is what Mrs. Zampardi told me.

The Court: Is she here? A. No, not as far as I know, I tried to contact her.

The Court: What someone told you she said is hearsay, that's not admissible evidence.

Mr. Browne: That's right.

The Court: If he did say that to this lady I want to hear it from her.

As far as you know, there is nothing that you know of, that he said in your opinion that would constitute being a panic peddler?

Mr. Pomerantz: Your Honor—

The Court: Wait now.

A. Not me personally.

. . .

[37] . . .

[38] . . . The Court: Let me see the document.

That's the one he made—"B" is his, "A" is yours.

The Court: Well, let's analyze it.

In your proposal number one, "Neither I, Jerome Keefe, nor any of my salesmen, will solicit property, by phone, flyer or visit in the community of Austin."

In other words, you don't want him to do business in Austin at all.

Mr. Pomerantz: That's not what that says, Your Honor.

The Court: Well, if he doesn't solicit where [39] is he going to get it?

Mr. Pomerantz: Well, the point here is admitted that he must advertise. Most business advertise and take out notices in the papers.

The Court: Well, is it unlawful for a broker to solicit?

Mr. Pomerantz: Under certain circumstances, it is.

The Court: That isn't what it says, it says to solicit.

Mr. Pomerantz: All right.

The Court: Number two, you want him to agree to show property to white as well as Negros. They agree to that don't they, in "B"? A. Yes, sir.

The Court: All right.

You want him to make a listing of housing available to the referral committee. A. Yes, sir.

The Court: Of the Organization. They agree to that. A. (Shaking head.)

[40] The Court: So, the only point you two group differ on is that you don't want him to solicit in the community of Austin? A. Yes, sir.

The Court: In other words, you don't want him to go anywhere in Austin soliciting, is that right? A. Right.

. . .

The Court: This is his counter.

He says, instead of wording it the way you want it worded, which would put him out of business, he says he's willing to do this:

"Neither I, Jerome Keefe, nor any of my salesmen, will colicit for sale, lease, listing or purchase any residential real estate within the State of Illinois, including the Community of Austin, on the grounds of loss of value due to the present or prospective entry into the vicinity of the

property involved, of any person or persons of any particular race, color, religion, or national origin or ancestry."

What's wrong with that?

[41] A. In the first place, if you are asking me an opinion—you are saying this is putting him out of business—I don't understand how stopping soliciting in a racially changing neighborhood is putting a realtor out of business; they are not out of business in Highland Park, where the realtors act as a go between. Under law, they bring buyer and seller together, for which they receive a six percent commission.

What we are saying, is that we are objecting to his solicitation for the purposes of exploiting white people, getting them to sell their property at a depressed value—

The Court: I understand.

A. — so they can make a fast buck on it. He's buying property.

The Court: You said a moment ago that he told this lady, that if she didn't sell, that the property value would go down.

A. No, I didn't —

The Court: I remember he did say that.

Mr. Pomerantz: Your Honor, may I say. Your Honor raises a very crucial question, which is [42] dealt with to a very great extent in our Exhibit "B" which was attached to the original answer, which is a pamphlet by the Commission on Human Relations. No one is arguing that there are other ways of soliciting or—excuse me, other ways of panic peddling, that is, to meet the exact words of the statute which prohibit it.

The problem is reflected in these two agreements, and there is a paragraph of the agreement where they differ. The situation in the Austin area of Chicago at this time is such that it takes less effort on the part of any real

estate man to induce fear into the people who live there, and to cause them to move, when previously they were probably thinking about that at some time and they rejected the idea. Then they get cards, they get cards from Mr. Keefe, or whoever else may be involved. It's the explosive situation which exists in this area, and that is what makes any type of solicitation, other than the normal types that are practiced all the time, bad here. Now, we don't say—

[43] The Court: What are the normal types?

Mr. Pomerantz: The normal types are advertising in the papers, making lists up of prospective buyers and sellers of homes, with this big deal about multiple listing service, and then these lists go flying around for all the major dealers in the community and probably someone out of state to get people who are being transferred here—

The Court: Well, is it unlawful for brokers to call property owners and say I'd like to have your property as a listing?

Mr. Pomerantz: It is not, but it is not a typical practice, and when it is engaged in in a neighborhood that has a situation that the Austin neighborhood now has, while the person doing it may not be able to be convicted under the statute that provides for it, it does have a deleterious effect and does cause the situation of panic peddling.

This booklet by the Commission explains the dilemma, that while the elements of the statute might not always be provable in every case, if a neighborhood is in a certain situation, [44] almost anything can tip the balance and make of what would have been a legitimate practice an illegitimate practice. It's a dilemma that we have met; it's occupied the talents of very many writers, very many politicians, all sorts of people who don't know exactly how to go about dealing with this activity.'

Now, these people here have—have simply decided the best thing to do is to try to pressure the plaintiff in this case. I don't know if they have done it to anybody else. They wanted to pressure him to stop what they found in this situation to be objectionable.

Now, the plaintiff in turn is simply trying to stop them from expressing their views. The law doesn't say that a person has to be guilty of a criminal offense before someone else tells that person's neighbors about his practices.

So, this is the dilemma that we are caught between right now. And, Your Honor, in the absence of evidence which would convict Mr. Keefe of the crime under the Illinois Statute —

[45] Mr. Browne: If the court—

Mr. Pomerantz: That's not the issue, we are talking about the temporary restraining order upon these people to stop them from exercising what we consider to be their rights of freedom of speech and assembly under the Constitution.

Now, this is simply one tactic—I believe this Tribune article in evidence will show—will show there are all sorts of tactics engaged in by all sorts of community groups to gain their wishes.

You may remember, Your Honor, when the South Outer Drive was expanded, there were little old ladies hugging the trees, and men came up with saws and sawed just above their head, and had the trees fall down. This was simply another means of protest engaged in by those people. That's essentially what we are doing here.

Mr. Browne: Counsel —

The Court: Have you finished with this witness?

Mr. Pomerantz: I'm all finished Your Honor.

The Court: You are excused.

Call your next witness.

Mr. Long: Your Honor, we have another witness, Reverend Father Edward McKenna, who we can call, however, I think that he might repeat what has already been said, and since this is only a preliminary injunction, further testimony and witnesses to refine the factual issues. I think should await final hearing; unless Your Honor feels that he would like to hear these other witnesses, we will reserve the other witnesses until final adjudication of this matter.

The Court: You have to conduct a trial the way you think it—

Mr. Pomerantz: You expressed the desire at one point to see the cards that Father McKenna had. He has them here, but I think a photostat of one of them is in one of the exhibits already introduced in evidence and I don't think that—

Mr. Browne: In other words, they are trying to save their ammunition for the final battle.

Mr. Pomerantz: If Your Honor wants to hear—

The Court: I am here in Court until 4:30, 5:00 o'clock.

[47] Mr. Long: The plaintiff only motioned up a hearing for a preliminary injunction.

The Court: If you wish to rest, you may do so; and if you wish to put on more evidence you may do so. This is your decision.

Mr. Long: We would of course like a final argument.

The Court: Yes, first, decide if you have any more witnesses.

(Short recess)

The Court: You may proceed.

Call your next witness.

Mr. Pomerantz: That's all the witnesses we'll call. The defense rests.

The Court: Rebuttal.

Mr. Browne: No.

The Court: No rebuttal, you may proceed with your argument if you wish.

[48-59] . . .

[60] . . . The Court: This court has no power to enjoin peaceful picketing at a place of business.

The defendants are entitled to [61] engage in peaceful picketing at his place of business.

The plaintiff has an adequate remedy at law, if they libel him or slander him while they are so picketing.

Counsel said that that isn't enough. I believe that if the defendants slander or libel the plaintiff, and he files his law suit for slander against each individual and the organization, and these individuals, and this organization are called upon to pay attorneys' fee to their lawyers, they will soon stop quickly, slander and libel.

The order of this court will be that the defendants will not be enjoined from peaceful picketing at his place of business.

They will be enjoined from picketing anywhere in Westchester or for passing out any leaflets or any literature of any kind, in any manner, anywhere in Westchester.

Please draw your decree and bring it in.

Mr. Browne: If the court please, what about [62] in Chicago?

The Court: In Chicago they may picket and pass out leaflets, and if they are libelous or slanderous, you have a remedy, and you may rest assured that if they do come to libel and slander and they are called upon by an attorney to pay a couple thousand dollars for fees, they are going to stop slandering.

Mr. Long: Your Honor, I take it that this is a preliminary injunction?

The Court: That's all we have been trying.

Mr. Pomerantz: Is there a matter of bond, Your Honor?

The Court: No, there is no bond.

Mr. Long: I take it this is of ten days duration.
The Court: You know the law, follow the law. This is
a temporary injunction under the statute.

. . .

[C43] State of Illinois }
County of Cook } SS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department — Chancery Division

JEROME M. KEEFE,

Plaintiff

vs.

ORGANIZATION FOR A BETTER AUSTIN,
WILLIAM HOLMES and JUSTIN MCCARTHY,
Defendants

No. 67 CH 5357

ORDER

[Entered Dec. 20, 1967]

This matter having come on for hearing for temporary injunctive relief, pursuant to the verified complaint for an injunction filed by the plaintiff herein and verified answer filed by the defendants, and the Court having heard the testimony of the witnesses for the plaintiff and for the defendants, and the arguments of counsel, and being fully advised in the premises,

The Court Finds:

1. That the defendants, members of a community organization called the Organization For A Better Austin, and the Organization itself, have, during the period complained of, engaged in activities protesting certain alleged practices of the plaintiff, a real estate broker in the Austin neighborhood of Chicago;

2. That on some days during the month of September, 1967, various members of the Organization picketed,

with placards and signs, in front of plaintiff's place of business [C44] at 214 South Laramie Street, in the Austin neighborhood in Chicago;

3. That said picketing was at all times conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic in the area, and did not precipitate any fights, disturbances or other breaches of the peace;

4. That on September 9, 16, and 30, 1967, and October 22, 1967, some members of the Organization went to Westchester, Illinois, a suburb of Chicago, where the plaintiff resides, and distributed leaflets consisting of mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood;

5. That said leaflets were distributed in several locations at various times on the said dates: to residents of some homes in the neighborhood of plaintiff's place of residence, to some people in a shopping center in Westchester, and to some parishoners on their way to or from Mass at the Devine Infant Church in Westchester;

6. That the said distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace;

7. That the defendants have a right to engage in a peaceful picketing of the plaintiff's place of business;

8. That defendants have no right to distribute the said leaflets in Westchester, the suburb in which plaintiff [C45] resides;

9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and that plaintiff has no adequate remedy at law.

It Is Therefore Ordered, Adjudged And Decreed that all members of the defendant organization and the defendants named herein, be and are hereby temporarily restrained and enjoined from passing out pamphlets, leaflets or literature of any kind, and from picketing, anywhere in the City of Westchester, Illinois.

It Is Further Ordered that the motion for injunctive relief for the issuance of a temporary injunction restraining and enjoining the members of the defendant organization and the defendants named herein from picketing the plaintiff's place of business and passing out pamphlets which criticize the plaintiff's method of operation or means of doing business, is hereby denied.

Enter:

/s/ D. A. Covelli
Judge

OPINION OF THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT

No. 53057

JEROME M. KEEFE,

Plaintiff-Appellee,

v.

ORGANIZATION FOR A BETTER AUSTIN, JUSTIN M. MCCARTHY, WILLIAM HOLMES, and KATHY METROPOULOS,

Defendants-Appellants.

Appeal From
Circuit Court,
Cook County

Honorable
DANIEL COVELL,
Presiding.

MR. JUSTICE MURPHY DELIVERED THE OPINION OF THE COURT.

Defendants appeal from an interlocutory order which found that their activities in Westchester, Illinois, a

suburb of Chicago where plaintiff, a real estate broker, resided, "invaded's plaintiff's right of privacy." The order temporarily restrained defendants from passing out literature and from picketing "anywhere in the City of Westchester," but denied injunctive relief as to plaintiff's place of business in the Austin neighborhood of Chicago. Defendants' direct appeal to the Illinois Supreme Court was transferred to this court on the ground that it had no jurisdiction on direct appeal in this case.

On appeal the determinative issue is whether the temporary injunction enjoining the picketing and distribution of leaflets in the area of the plaintiff's home denied defendants' freedom of speech and press under the First and Fourteenth Amendments to the United States Constitution and Article II, Section 4 of the Illinois Constitution.

Plaintiff is a real estate broker operating in the Austin area of the City of Chicago. From time to time he solicits listings from property owners by door-to-door distribution of his business card. The card contains the name "Jerry's Real Estate" and gives his business address and telephone number. It bears the legend, "We invite your listings. We have prospective buyers for income property and residential property in the Austin area."

The Austin area is undergoing racial change, and the defendant Organization for a Better Austin [OBA], an integrated community organization, has been working to keep white residents in the community. In its efforts to stabilize the community and to deal rationally with integration, the OBA is attempting to stop "panic peddling" by those brokers who exploit residents of racially changing areas by fomenting panic among them. Among its committees is the Real Estate Practices Committee, which deals with "panic peddlers." The OBA objects to any form of solicitation of real estate listings, and it has

obtained written agreements from a number of local real estate brokers covering selling practices, which agreement plaintiff refused to sign.

In order to induce plaintiff to stop these solicitations of real estate listings, defendant OBA initiated a program of picketing and leaflet distribution in the areas of his home and his place of business. The purpose of these activities admittedly was to make plaintiff agree to stop soliciting business. The Westchester leaflets gave plaintiff's home address and telephone number and urged Westchester residents to call plaintiff and tell him to sign the agreement. The leaflet contained the statement: "When he signs the Agreement we stop coming to Westchester."

At the trial, defendant William A. Holmes, when cross-examined about the primary motive for passing out "pluggers" in Westchester, said:

A. All right, I'll answer that by saying that my primary motive was to ask Mr. Keefe to make a public act of faith in the community where he is making his living, and because he failed to do this—in fact he said that we don't want a thing to do with you, and we don't care about your community—so we went out and decided to let him, let his neighbors know what he was doing to us.

Q. And, by doing this, you had hoped that he would finally sign this agreement that you submitted, is that right?

A. Yes, Sir.

Q. All right.

On October 4, 1967, plaintiff commenced the instant action for injunctive relief. In plaintiff's amended complaint it is alleged that the defendants were displeased with the manner in which plaintiff conducted his real estate business and accused him of being "a blockbuster (selling real estate to one Negro family and then fright-

ening the other property owners in the neighborhood whereby they became panicky and began to offer their property for sale through plaintiff's real estate office), which course of conduct on the part of defendants commenced on or about August 15, 1967 and continued through October 1, 1967, and still continues without any justifiable cause, reason or excuse."

Plaintiff alleged that members of the OBA picketed his place of business and distributed literature through the community "criticizing him and impugning his reputation as an honest and law-abiding operator of a real estate business," and attacked the business tactics employed by the plaintiff. The relief prayed for was an injunction restraining defendants from picketing his place of business and his home and from distributing derogatory pamphlets.

Defendants answered and admitted picketing and the distribution of circulars, and stated "that the activities that they engaged in were an exercise of the rights of freedom of speech and assembly guaranteed to them by the Constitution of the United States and of the State of Illinois." Defendants denied that plaintiff was entitled to any injunctive relief against them.

After a hearing, in which both sides introduced the testimony of witnesses and exhibits, the trial court entered an order on December 20, 1967, which included the following findings:

4. That on September 9, 16, and 30, 1967, and October 22, 1967, some members of the Organization went to Westchester, Illinois, a suburb of Chicago, where the plaintiff resides, and distributed leaflets consisting of mimeographed sheets containing critical descriptions of the manner in which plaintiff was conducting his real estate business in the Austin neighborhood;

5. That said leaflets were distributed in several locations at various times on the said dates: to residents of some homes in the neighborhood of plaintiff's place of residence, to some people in a shopping center in Westchester, and to some parishioners on their way to or from Mass at the Divine Infant Church in Westchester;
6. That the said distribution of leaflets was on all occasions conducted in a peaceful and orderly manner, did not cause any disruption of pedestrian or vehicular traffic, and did not precipitate any fights, disturbances or other breaches of the peace;
7. That the defendants have a right to engage in a peaceful picketing of the plaintiff's place of business;
8. That defendants have no right to distribute the said leaflets in Westchester, the suburb in which plaintiff resides;
9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and that plaintiff has no adequate remedy at law.

The order granted plaintiff injunctive relief as to his home and denied it as to his place of business. This is the order from which defendants appeal.

As to the distribution of leaflets, defendants assert that a number of cases cited by the United States and Illinois Supreme Courts have clearly established that the distribution of non-commercial pamphlets, leaflets and literature is fully protected under the State and Federal constitutional free speech and press clauses against prior restraint. On this point defendants' authorities include: *Lovell v. Griffin*, 303 U.S. 444 (1938), and *Schneider v. Town of Irvington*, 308 U.S. 147 (1939).

In *Lovell v. Griffin*, a State ordinance prohibited the distribution of literature of any kind within the limits

of the City of Griffin without the permission of a city official. The Supreme Court found this provision to be an unconstitutional restraint on freedom of speech and the press and stated (p. 452):

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.
... .

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U.S. 727, 733."

In *Schneider v. Town of Irvington*, State ordinances prohibited the distribution of literature without a license from the chief of police. There the Supreme Court held the licensing made impossible the free and unhampered distribution of pamphlets and said (p. 164):

"As said in *Lovell v. City of Griffin, supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees."

Defendants also cite the following cases where the Supreme Court of Illinois held that ordinances which licensed the distribution of pamphlets and circulars violated Section 4 of Article II of the Constitution of Illinois: *Village of South Holland v. Stein*, 373 Ill. 472, 26 N.E.2d 868 (1940), and *City of Blue Island v. Kozul*, 379 Ill. 511, 41 N.E.2d 515 (1942).

In *Village of South Holland v. Stein*, a village ordinance made it unlawful for anyone to go to a private residence for the purpose of soliciting without a license. There the court cited *Lovell v. City of Griffin* and *Schneider v. Town of Irvington* and said (p. 479):

"The constitution of Illinois is even more far-reaching than that of the constitution of the United States in providing that every person may speak freely, write and publish on all subjects, being responsible for the abuse of that liberty. Webster's International Dictionary defines the word 'publish' as meaning 'to bring before the public as for sale or distribution.'"

In *City of Blue Island v. Kozul*, an ordinance provided that all "peddlers" have a license. Defendant, a member of Jehovah's Witnesses, walked up and down the streets with a 15-year old boy, carrying a sign and offering to sell a publication for five cents. In reversing the conviction the court held the ordinance unconstitutional. There the court said (p. 514):

"Section 4 of article 2 of the constitution of Illinois provides: 'Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.' The first amendment to the constitution of the United States provides: 'Congress shall make no law * * * abridging the freedom of speech, or of the press.' It has been frequently held that the freedom of speech and of the press secured by the first amendment against abridgement by the United States is similarly secured to all persons by

the fourteenth amendment against abridgement by a State."

And at page 515:

"Recent pronouncements of the Supreme Court of the United States make it obvious that the ordinance here in question, as applied to the sale and distribution of the magazines and leaflets by the defendant is unconstitutional and a violation of the right of freedom of speech and of the press. *Lovell v. City of Griffin, supra*; *Schneider v. Town of Irvington, supra*."

Defendants further argue that injunctions restraining the distribution of literature are as much prohibited as the ordinances found unconstitutional by the Illinois and United States Supreme Courts. (*Near v. Minnesota*, 283 U.S. 697 (1931); *Montgomery Ward & Co. v. United Employees*, 400 Ill. 38, 79 N.E.2d 46 (1948).) Defendants further cite *Martin v. Struthers*, 319 U.S. 141 (1943), where the United States Supreme Court held that Jehovah's Witnesses had a constitutional right to distribute their information from door to door. The right to distribute was recognized even though the Witnesses rang doorbells at a time of the day when many residents were accustomed to be sleeping. Despite this disturbance, the right to distribute information was upheld. Defendants note that in the instant case no such disturbance was created and the leaflets were merely placed in or near the doors of the homes and no doorbells were rung and none of the residents complained. In *Martin v. Struthers*, the court said (p. 145):

"While door to door distributors of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread use of this method of communication by many groups

espousing various causes attests its major importance."

And at page 146:

"Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."

Defendants further argue, "This Court and the United States Supreme Court, in the above decisions, have held unconstitutional restraints on the free and unfettered distribution of circulars, pamphlets and other forms of expression; those restraints have ranged from licensing provisions to across the board prohibitions on such distribution by way of injunction. All were struck down by the courts. In the instant case defendants are faced with an injunction prohibiting their distribution of any literature, anywhere in a village of over 18,000 people. Such a restraint clearly violates both the United States and Illinois constitutions."

Plaintiff contends that the right to free speech is not unqualified, and that defamatory attacks upon plaintiff personally, with the purpose of having plaintiff abandon his lawful business practices and forcing him to sign the "No solicitation" agreement, are properly the subject of prior restraint. Cases cited include *Austin Congress Corp. v. Mannina*, 46 Ill. App.2d 192, 196 N.E.2d 33 (1964), where this court affirmed an injunction that had

been issued against defendants restraining them from picketing plaintiff's nursing home and publicly stating, among other things, that plaintiff was in violation of the building code. Defendants contended that there was an absolute right to picket provided that such picketing was peaceful, truthful and informational, and the court said (p. 203):

"That picketing for the purpose of harassment and to cause economic ruination even under the cloak of publicizing the truth of a purported building code violation is violative of the public policy of the State of Illinois is well settled. In *Carpenters' Union v. Citizens' Committee to Enforce Landis Award*, 333 Ill. 225, 246, 164 NE 393, our Supreme Court stated:

'No persons, individually or by combination, have the right to directly or indirectly interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment his own interest does not require. Losses wilfully caused by another from motives of malice to one who seeks to exercise and enjoy the fruits and advantages of his own enterprise, industry, skill or credit will sustain an action.'

"And at 247:

'Coercion is as easily accomplished without threats of violence as with them, and fear of loss of or injury to business unless one submits to demands is as effective as fear of violence to his person. No person has a right to make war on another and to compel others to break off business relations with him to his injury. If an evil motive does not make a lawful act unlawful, it is equally true that what may be regarded as a good motive will not make an unlawful act lawful.'"

Plaintiff further cites *Carpenters' Union v. Citizens Comm.*, 333 Ill. 225, 164 N.E. 393 (1928), where the

Carpenters' Union sought an injunction against the Citizens Committee to Enforce the Landis Award, a not-for-profit corporation, and certain individuals to restrain the defendants from, *inter alia*, interfering with plaintiff's business and "from attempting to interfere with or disturb or prevent employment of complainants by newspaper advertisements, telephone messages, letters, circulars, notices, personal conversations, economic pressure or any other means." There the court said (p. 238):

"No person or combination of persons has the right, directly or indirectly, to interfere with or disturb another in his lawful business or occupation or for the sake of compelling him to do some act which in his own judgment he does not approve. Losses caused by willful interference, without legal cause or justification, with the relations of employer and employee or with their freedom to contract are maliciously caused and will sustain an action at law, or, in a proper case, an injunction may be obtained to restrain the wrongful interference."

On the basic issue of picketing and distribution of literature, and after examining the injunctive order, its findings and relief granted, we think it is obvious that the trial court accepted the guidelines and principles set forth in defendants' authorities by its denial of injunctive relief as to plaintiff's place of business, but subordinate to plaintiff's "right of privacy" in the area of his residence and church. Therefore, no discussion is required here as to the basic issue of defendants' right to picket and to distribute literature, as set forth herein.

On the issue as to plaintiff's "right of privacy" in Westchester in the area of his residence, defendants argue that they have in no way criticized or even discussed plaintiff's private life or private conduct. The only references made by the defendants about the plaintiff concern

his sales techniques and gave defendants' opinion as to the effect of such sales techniques on defendants' community. Defendants argue that the sales techniques and practices of real estate brokers, including those of the plaintiff, are the subject of great public interest and concern, particularly the problem created by real estate sales techniques which may be characterized as "panic peddling." Defendants assert that "groups such as the Organization for a Better Austin, which are attempting to create a stably integrated community are thwarted by the fear and panic created as a result of real estate brokers' active solicitation by phone call, business card and personal visit to homes in blocks adjoining segregated areas. A stable integrated community is one where people of all races reside in all parts of the community and not one where the periphery of the Negro ghetto is integrated only between the time the first Negro moves in and last white moves out. There are few domestic social issues more pressing than the one with which the defendants are attempting to deal," and that "real estate sales techniques should be a matter of personal privacy would be a surprising result in the light of the growing public concern and interest in the effect of real estate practices on one of America's most pressing social problems — race relations."

Defendants' authorities on this point include *Time, Inc. v. Hill*, 385 U.S. 374 (1967). In that case a magazine was alleged to have falsely reported that a new play portrayed an experience suffered by plaintiff and his family when held hostage in plaintiff's home. Plaintiff sued for damages under the New York right of privacy statute. There the Supreme Court held the article involved to be constitutionally protected, and the court said (p. 388):

"The guarantees for speech and press are not the preserve of political expression or comment upon pub-

lic affairs, essential as those are to healthy government. One need only pick up any newspaper or magazine and comprehend the vast range of published matter which exposes persons to public view, both private citizens and public officials. Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press. 'Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'

Defendants further argue that "the significance of *Time v. Hill* is magnified by the fact that it articulated constitutional protections for speech and press in the context of subsequent punishment or subsequent compensation for alleged speech and press excesses, while here the constitutional issues are posed in the context of prior restraint — an injunction. The constitutional protections against prior restraint on speech and the press have traditionally been and are to this day greater than those applicable to 'subsequent punishment' for the exercise of speech and press freedoms. It is clear that defendants' constitutional right to distribute leaflets cannot be enjoined on the basis of what is here a nonexistent right of privacy."

Plaintiff argues that the importance of privacy has been recognized and supported by the United States Supreme Court. Authorities include *Breard v. Alexandria*, 341 U.S. 622 (1951), where the Supreme Court sustained an ordinance prohibiting door-to-door salesmen and said (pp. 625-6):

"All declare for liberty and proceed to disagree among themselves as to its true meaning. There is

equal unanimity that opportunists, for private gain, cannot be permitted to arm themselves with an acceptable principle, such as * * * a free press, and proceed to use it as an iron standard to smooth their path by crushing the living rights of others to privacy and repose."

Plaintiff further contends that injunctive relief is the proper remedy where privacy has been wrongfully invaded. Authorities cited include *Pipe Machinery Co. v. DeMore*, 76 N.E.2d 725 (1947) (appeal dismissed 149 Ohio St. 582, 79 N.E.2d 910 (1948)), and *Hebrew Home v. Davis*, 235 N.Y.S.2d 318 (1962). In *Pipe Machinery Co.*, striking employees went to the residences of eight working employees of plaintiff, carrying placards naming each employee, describing him as a "scab" and bearing legends such as "How can you stand to live so near him?" The court held that the purpose of the picketing in the vicinity of the employees' residences was not to give the public information as to the merits of the strike but to intimidate or persuade them to join the strikers. The court held that an injunction restraining the defendants from picketing and circulating placards at or near the employees' residences did not infringe the rights of free speech, stating (p. 727):

"We are not dealing here with a limitation upon the right of free speech. It is obvious that picketing in this case was not for the purpose of disseminating any information as to the strike. Picketing interfered with the quiet and peaceful environment of the homes and thereby established conditions making more difficult the raising of a family and the maintenance of a home."

Also, in *Hebrew Home v. Davis*, the court said (p. 324):

"There is not a scintilla of justification shown for this conduct. Truly it is shocking, reprehensible and outrageous, deserving the unhesitating and scathing

rebuke of the court. Conducted at a considerable distance from the hospital, in an exclusively residential area, it was apparently aimed to cause unspeakable embarrassment, humiliation and mortification to the named jurist and his family. It represents a form of direct and unmitigated coercion and terrorism that should be roundly denounced and sternly condemned. Not within any conceivable limit of the right to free speech and the right to inform, it represents a mean, foul and sinister blow, one to which decent unionism would not stoop."

Plaintiff further cites an article on residential picketing written by Professor Alfred Kamin, of the Loyola University School of Law, in which it is said (pp. 201-202, Northwestern University Law Review, Vol. 61):

"In every reported American case, residential picketing has been either declared illegal under criminal statutes and municipal regulations, banned by injunction, or proscribed by administrative cease and desist orders."

Plaintiff asserts that "defendants' activities in Westchester share the same vice condemned in the residential picketing cases. The OBA activities in Westchester are coercive not informative. They disrupt family life and interfere with the right of privacy. They are not entitled to protection under the guise of free speech."

Finally, defendants contend that the injunction here is overly broad and that the trial court erred in enjoining defendants from picketing anywhere in the Village of Westchester. Defendants assert that the trial court issued an injunction against picketing by defendants anywhere in the Village of Westchester, "absent any allegation or evidence by the plaintiff or finding by the court that defendants had engaged in *any* picketing in the village of Westchester." Defendants further state that if there had been any evidence of defendants' picketing in West-

chester, the injunction entered here, prohibiting picketing anywhere in this village of over 18,000 people, would be the kind of "blanket prohibition" on picketing which was condemned as violating the First Amendment. Cited is *Centennial Laundry Co. v. West Side Organization*, 34 Ill.2d 257, 215 N.E.2d 443 (1966), where it is said (p. 266):

"These blanket prohibitions are unrelated to the purpose for which the picketing, distribution of literature or demonstrating might be conducted, and they are so sweeping and imprecise as to offend constitutional guarantees of freedom of speech, press and assembly."

We conclude that the trial court was correct in finding:

"9. That defendants' activities in Westchester have invaded plaintiff's right of privacy, causing irreparable harm, and the plaintiff had no adequate remedy at law," and in granting injunctive relief in Westchester, the area of plaintiff's home. The purpose of the defendants was not to inform the public of a matter of public interest, but the sole purpose was to force plaintiff to sign a "No solicitation" agreement. There was no evidence to show that plaintiff was engaged in "panic peddling" in Westchester or that he intended to do business in Westchester. Coercion, not speech, was the purpose and object of defendants' activities. As said in *Pipe Machinery Co. v. DeMore* (p. 727):

"The allowable area of economic conflict should not be extended to an invasion of the privacy of the home. . . .

"The common law has always treated the home of a person with great respect. The home is referred to as a man's 'castle' or as his 'sanctuary.' Picketing homes and the use of language referring to the head of the house as a 'scab' would not aid in establishing the proper environment for a home."

As said in *Hebrew Home v. Davis*, the situation here “represents a form of direct and unmitigated coercion and terrorism” that should not be permitted.

We find no merit here in defendants’ charge that the injunction was overly broad. The area of defendants’ activities in Westchester, a city of 18,000, was broad, and no prejudice to defendants is apparent or demonstrated by the inclusion of the entire Village as the restraint area. We believe the public policy of this state strongly favors protection of the privacy of home and family from encroachments of the nature of defendants’ activities, and defendants’ right of “free speech” is not involved here.

Therefore, for the reasons given, the order of the Circuit Court of Cook County is affirmed.

AFFIRMED.

ADESKO, *P.J.*, and BURMAN, *J.*, concur.

On the same day to-wit, September 29th, 1969, the following proceedings were had:

Jerome M. Keefe,

Appellee

No. 53057 vs.

Organization for a Better Austin,
Justin M. McCarthy, William
Holmes, and Kathy Metropoulos,
Appellants

} Appeal from the
Circuit Court of
Cook County

AFFIRMING ORDER

The order appealed from of the Circuit Court of Cook County is **AFFIRMED** and Appellee recover costs from Appellants.

Execution may issue.



Supreme Court of the United States

No. 1484 October Term, 19 69

**Organization for a Better Austin,
et al.,**

Petitioners,

v.

Jerome H. Eads

Order allowing certiorari. Filed June 22 19 70.

Appellate

District,

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois, First

is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.